

Samuel H. Miller

[MADISON]

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LETTERS
FROM
THE SECRETARY OF STATE
TO
MR. MONROE,
ON THE
SUBJECT OF IMPRESSMENTS, &c.
ALSO,
EXTRACTS FROM, AND ENCLOSURES IN,
THE
LETTERS OF MR. MONROE
TO THE
SECRETARY OF STATE,
PRIOR TO THE
JOINT MISSION OF HIM AND MR. PINKNEY;

PART II.

Accompanying the message of the president of the United States, received on the 22d of March, 1808.

MARCH 23, 1808.

Printed by order of the house of representatives.

WASHINGTON CITY:

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Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,

Gen. News JANUARY 5, 1804.

SIR, today or

THE information and observations which you have as yet received from me since your arrival in London, on the impressment of our seamen and other violations of our rights, have been in private letters only. The delay in making these injuries the subject of official communications, proceeded, first, from an expectation that the British government would have notified formally to the United States as a neutral power, the state of war between Great Britain and France, which would have been an apt occasion, for combining with assurances of the fairness with which our neutral obligations would be fulfilled, our just claims on a correspondent respect for our neutral rights, and particularly of those which had been least respected during the last war: secondly, from the expected arrival of Mr. Merry, which, if he should not be charged with such a notification, might be a favorable opportunity for commencing the explanations and discussions which must precede a thorough correction of the wrongs which we experience.

Since the arrival of Mr. Merry, accordingly, no time has been lost in calling his attention to the subject; and in preparing both it and him, for the negotiation which is now to be committed to you. If appearances are to be trusted, his impressions and representations will be friendly to it. In my conversations with him, which have been free and full, he has expressed the best dispositions, has listened with candor to the appeals made, as well to the considerations of

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justice, as of the solid interest of his nation; and although he suggests serious difficulties on certain points, he will, I believe, sincerely co-operate in lessening them, and in bringing about an arrangement which will be acceptable to this country. The only topic on which any thing has passed in writing between the department of state and him, is that of the pretended blockade of St. Domingo. Copies of my letter to him, and of his answer, are herewith inclosed; as also of the letter written to Mr. Thornton, some time before, and referred to in that to Mr. Merry, in relation to a like blockade of Martinique and Guadeloupe.

Although there are many important objects which may be thought to invite conventional regulations between the United States and Great Britain, it is evidently proper to leave for subsequent consideration, such as are less urgent in their nature, or more difficult in their adjustment; and thereby to render the way plainer and shorter to an agreement with respect to objects which cannot be much longer delayed without danger to the good understanding between the two nations. With this view the plan of a convention contemplated by the president, is limited to the cases of impressments of our seamen, of blockades, of visiting and searching our vessels, of contraband of war, and of the trade with hostile colonies, with a few other cases affecting our maritime rights; embracing however, as inducements to Great Britain to do us justice therein, a provision for the surrender of deserting seamen and soldiers, and for the prevention of contraband supplies to her enemies.

The plan digested for your use is subjoined. The first column contains the articles which are to be proposed in the first instance, and which are considered as within our just expectations: the second modifies the articles into the concessions which the British government may possibly require, and which it may be expedient for us ultimately to admit.

*A Convention between the United States and
Great Britain.*

FIRST PROPOSAL. SECOND AND ULTIMATUM.

ARTICLE I.

No person whatever shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the parties, by the public or private armed ships belonging to or in the service of the other, unless such person be at the time in the military service of an enemy of such other party.

ARTICLE I.

No seaman, seafaring or other person, shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to the citizens or subjects of one of the parties, by the public or private armed ships belonging to or in the service of the other party, and strict and effectual orders shall be given for the due observance of this engagement: but it is to be understood that this article shall not exempt any person on board the ships of either of the parties, from being taken therefrom by the other party, in cases where they may be liable to be so taken according to the laws of nations, which liability, however, shall not be construed to extend in any case to seamen or seafaring persons, being actually part of the crew of the vessel in which they may be, nor to persons of any description passing from one port to another port of either of the parties.

ARTICLE II.

The same.

ARTICLE II.

No person being a subject or citizen of one of the parties, and resorting to or residing in the dominions of the other, shall in any case be compelled to serve on board any vessel, whether public or private, belonging to such other party: and all citizens or subjects whatever of the respective parties, at this time compulsively serving on board the vessels of the other, shall be forthwith liberated, and ena-

bled, by an adequate recompence, to return to their own country.

ARTICLE III.

The same.

ARTICLE III.

If the ships of either of the parties shall be met with sailing either along the coasts or on the high seas, by any ship of war or other public or private armed ships of the other party, such ships of war or other armed vessels shall, for avoiding all disorder in visiting and examining the same, remain out of cannon shot, unless the state of the sea or the place of meeting render a nearer approach necessary; and shall in no case compel or require such vessel to send her boat, her papers or any person from on board to the belligerent vessel; but the belligerent vessel may send her own boat to the other, and may enter her to the number of two or three men only, who may, in an orderly manner, make the necessary inquiries concerning the vessel and her cargo; and it is agreed that effectual provision shall be made for punishing violations of any part of this article.

ARTICLE IV.

The same.

ARTICLE IV.

Contraband of war shall consist of the following articles only: salt petre, sulphur, cuirasses, pikes, swords, sword belts, knapsacks, saddles and bridles, cannons, mortars, fire arms, pistols, bombs, grenades, bullets, fire-locks, flints, matches and gun powder; excepting, however, the quantity of the said articles which may be necessary for the defence or use of the ship and those who compose the crew; and no other articles whatever, not here enumerated, shall be reputed contraband or liable to confiscation, but shall pass freely without being subjected to the smallest difficulty, unless they be ene-

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my's property ; and it is to be particularly understood, that under the denomination of enemy's property, is not to be comprised the merchandise of the growth, produce or manufactures of the countries or dominions at war, which shall have been acquired by the citizens or subjects of the neutral power, and shall be transported for their account ; which merchandise cannot, in any case, or on any pretext, be excepted from the freedom of the neutral flag.

ARTICLE V.

The same.

ARTICLE V.

In all cases where the prize courts of either party shall pronounce judgment against any vessel or property claimed by citizens or subjects of the other, the sentence or decree shall mention the reasons or motives on which the same shall have been founded ; and an authenticated copy of the sentence or decree, and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of the said vessel, without any delay, he paying the legal fees for the same.

ARTICLE VI.

The same.

ARTICLE VI.

In order to determine what characterizes a blockaded port, that denomination is given only to a port where there is by the disposition of the power which attacks it with ships stationary or sufficiently near, an evident danger in entering.

ARTICLE VII.

Omit the preamble.

ARTICLE VII.

[In consideration of the distance of the ports likely to be blockaded by either party, from the ports of the other party, and of other circumstances incident to their relative situa-

tions] it is agreed that no vessel sailing from the ports of either, shall, altho' cleared or bound to a blockaded port, be considered as violating in any manner the blockade, unless on her approach towards such port she shall have been previously warned against entering the same.

ARTICLE VIII.

Omit "captains, of-
ficers."

ARTICLE VIII.

It is agreed that no refuge or protection shall be afforded by either party to the "captains, officers," mariners, sailors or other persons not found to be its own citizens or subjects, who shall desert from a vessel of the other party, of the crew whereof the deserter made a part; but on the contrary, all such deserters shall be delivered up, on demand, to the commanders of the vessels from which they shall have deserted, or to the commanding officers of the ships of war of the respective nations, or to such other persons as may be duly authorized to make requisition in that behalf; provided, that proof be made, within two years from the time of desertion, by an exhibition of the ship's papers, or authenticated copies thereof; and by satisfactory evidence of the identity of the person, that the deserters so demanded were actually part of the crew of the vessels in question.

And for the more effectual execution of this article, adequate provision shall be made for causing to be arrested, on the application of the respective consuls or vice-consuls to the competent authorities, all deserters as aforesaid, duly proved to be such, in order that they may be sent back to the commanders of the vessels to which they belonged, or removed out of the country, and all due aid and assistance shall be given in searching for, as well as in seizing and arresting the said de-

serters; who shall even be detained and kept in the prisons of the country at the request and expense of the said consuls or vice consuls, until they shall have found an opportunity of sending them back or removing them as aforesaid. But if they be not so sent back or removed within three months from the day of their arrest, they shall be set at liberty, and shall not again be arrested for the same cause.

ARTICLE IX.

Omit "officers or".

ARTICLE IX.

It is further agreed that no refuge or protection shall be afforded, by either of the parties, to any "officers or" soldiers, not found to be its own citizens or subjects, who shall desert from the military service of the other; but that, on the contrary, effectual measures shall be taken, in like manner and under like regulations and conditions, as with respect to sailors, for apprehending any such deserting soldiers, and delivering them to the commanding officers of the military posts, forts or garrisons from which they shall have deserted, or to the consuls or vice consuls on either side, or to such persons as may be duly authorized to demand their restitution.

ARTICLE X.

Omitted.

ARTICLE X.

It is however understood, that no stipulation herein made, shall be construed to empower the civil or military officers of either of the parties, to enter forcibly into any of the forts, garrisons, posts or other places, or to use violence of any sort within the jurisdiction of the other party, or be construed, in any manner, to contravene or derogate from the stipulation contained in the first of the above articles against demanding or taking any persons out of vessels on the high seas,

and without the jurisdiction of either of the parties.

ARTICLE XI.

The same.

ARTICLE XI.

Each party will prohibit its citizens or subjects, from clandestinely carrying away from the territories or dominions of the other, any seamen or soldiers belonging to such other party.

ARTICLE XII.

The same.

ARTICLE XII.

Neither party shall permit any of the articles above enumerated, as contraband of war, to be cleared out from its ports to any place within the jurisdiction of an enemy of the other party; and, in order to enforce this regulation, due proof and security shall be given, that all such articles of contraband as may be exported from the ports of either of the parties, have been actually destined elsewhere, than within the jurisdiction of an enemy of the other party.

ARTICLE XIII.

The same.

ARTICLE XIII.

This convention shall be in force for the term of eight years from the date of the exchange of ratifications. It shall be ratified on both sides within months from the day of its signature, or sooner if possible; and the ratifications exchanged without delay, in the United States, at the city of Washington.

Observations on the preceding plan.

THE first article relates to impressments from American vessels on the high seas. The commanders of British armed vessels, have, as is well known, been long in this practice. They have indeed not only continued it, under the sanction of their superiors, on the high seas; but have, with impunity, extended it to our own coasts, to neutral ports, and to neutral territory; and, in some instances, to our own harbors. The article does not comprehend these latter cases; because it would not be very honorable in Great Britain to stipulate against the practice of such enormities, nor in the United States to recur to stipulations as a security against it; and because it may be presumed that such particular enormities will not be repeated or unpunished, after a general stop shall have been put to impressments.

The article, in its first form, renounces the claim to take from the vessels of the neutral party, on the high seas, any person whatever, not in the military service of an enemy; an exception which we admit to come within the law of nations, on the subject of contraband of war.

With this exception, we consider a neutral flag on the high seas, as a safe guard to those sailing under it. Great Britain, on the contrary, asserts a right to search for, and seize her own subjects; and under that cover, as cannot but happen, are often seized and taken off, citizens of the United States and citizens or subjects of other neutral countries, navigating the high seas, under the protection of the American flag.

Were the right of Great Britain in this case not denied, the abuses flowing from it would justify the United States in claiming and expecting a discontinuance of its exercise. But the right is denied, and on the best grounds.

Although Great Britain has not yet adopted, in the same latitude with most other nations, the immuni-

ties of a neutral flag, she will not deny the general freedom of the high seas, and of neutral vessels navigating them, with such exceptions only, as are annexed to it, by the law of nations. She must produce then such an exception in the law of nations, in favor of the right she contends for. But in what written and received authority will she find it? In what usage, except her own, will it be found? She will find in both, that a neutral vessel does not protect certain objects denominated contraband of war, including enemies serving in the war, nor articles going into a blockaded port; nor, as she has maintained, and as we have not contested, enemy's property of any kind. But no where will she find an exception to this freedom of the seas, and of neutral flags, which justifies the taking away of any person, not an enemy in military service, found on board a neutral vessel.

If treaties, British as well as others, are to be consulted on this subject, it will equally appear, that no countenance to the practice can be found in them. Whilst they admit a contraband of war, by enumerating its articles, and the effect of a real blockade by defining it, in no instance do they affirm or imply a right in any sovereign, to enforce his claims to the allegiance of his subjects, on board neutral vessels on the high seas. On the contrary, whenever a belligerent claim against persons on board a neutral vessel, is referred to in treaties, enemies in military service alone are excepted from the general immunity of persons in that situation; and this exception confirms the immunity of those who are not included in it.

It is not then from the law, or the usage of nations, nor from the tenor of treaties, that any sanction can be derived for the practice in question. And surely it will not be pretended that the sovereignty of any nation extends, in any case whatever, beyond its own dominions, and its own vessels on the high seas. Such a doctrine would give just alarm to all nations, and more than any thing would countenance the im-

putation of aspiring to an universal empire of the seas. It would be the less admissible too, as it would be applicable to times of peace as well as to times of war, and to property as well as to persons. If the law of allegiance, which is a municipal law, be in force at all on the high seas, on board foreign vessels, it must be so at all times there, as it is within its acknowledged sphere. If the reason alleged for it be good in time of war, namely, that the sovereign has then a right to the service of all his subjects, it must be good at all times, because at all times he has the same right to their service. War is not the only occasion for which he may want their services; nor is external danger the only danger against which their services may be required for his security. Again, if the authority of a municipal law can operate on persons in foreign vessels on the high seas, because within the dominion of their sovereign they would be subject to that law, and are violating that law by being in that situation; how reject the inference that the authority of a municipal law may equally be enforced on board foreign vessels on the high seas, against articles of property exported in violation of such a law, or belonging to the country from which it was exported? And thus every commercial regulation, in time of peace too, as well as of war, would be made obligatory on foreigners and their vessels, not only whilst within the dominion of the sovereign making the regulation, but in every sea, and at every distance where an armed vessel might meet with them. Another inference deserves attention. If the subjects of one sovereign may be taken by force from the vessels of another, on the high seas, the right of taking them, when found, implies the right of searching for them, a vexation of commerce, especially in time of peace, which has not yet been attempted, and which, for that as well as other reasons, may be regarded as contradicting the principle from which it would flow.

Taking reason and justice for the tests of this practice, it is peculiarly indefensible; because it deprives

the dearest rights of persons, of a regular trial, to which the most inconsiderable article of property captured on the high seas, is entitled; and leaves their destiny to the will of an officer, sometimes cruel, often ignorant, and generally interested by his want of mariners, in his own decision. Whenever property found in a neutral vessel is supposed to be liable on any grounds to capture and condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of his power. Can it be reasonable then or just, that a belligerent commander who is thus restricted and thus responsible in a case of mere property of trivial amount, should be permitted, without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into instant execution by forcing every individual he may choose, into a service abhorrent to his feelings; cutting him off from his most tender connexions, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest dangers? Reason, justice and humanity unite in protesting against so extravagant a proceeding. And what is the pretext for it? It is that the similarity of language and of features, between American citizens and British subjects, are such as not easily to be distinguished; and that without this arbitrary and summary authority to make the distinction, British subjects would escape under the name of American citizens, from the duty which they owe to their sovereign. Is then the difficulty of distinguishing a mariner of one country from the mariner of the other, and the importance of his services, a good plea for referring the question whether he belongs to the one or to the other, to an arbitrary decision on the spot, by an interested and irresponsible officer? In all other cases, the difficul-

ty and the importance of questions are considered as reasons for requiring greater care and formality in investigating them, and greater security for a right decision on them. To say that precautions of this sort are incompatible with the object, is to admit that the object is unjustifiable, since the only means by which it can be pursued are such as cannot be justified.

The evil takes a deeper die when viewed in its practice as well as its principles. Were it allowable that British subjects should be taken out of American vessels on the high seas, it might at least be required that the proof of their allegiance should lie on the British side. This obvious and just rule is however reversed, and every seaman on board, though going from an American port and sailing under the American flag, and sometimes even speaking an idiom proving him not to be a British subject, is presumed to be such, unless shewn to be an American citizen. It may safely be affirmed that this is an outrage and an indignity which has no precedent, and which Great Britain would be among the last nations in the world to suffer if offered to her own subjects, and her own flag. Nor is it always against the right presumption alone, which is in favor of the citizenship corresponding with the flag, that the violence is committed. Not unfrequently it takes place in defiance of the most positive proof, certified in due form by an American officer. Let it not be said that in granting to American seamen this protection for their rights as such, the point is yielded that the proof lies on the American side, and that the want of it in the prescribed form justifies the inference that the seaman is not of American allegiance. It is distinctly to be understood, that the certificate usually called a protection to American seamen, is not meant to protect them under their own, or even any other neutral flag on the high seas. We can never admit, that in such a situation, any other protection is required for them

than the neutral flag itself on the high seas. The document is given to prove their real character, in situations to which neither the law of nations nor the law of their own country are applicable. In other words, to protect them within the jurisdiction of the British laws, and to secure to them, within every other jurisdiction, the rights and immunities due to them. If in the course of their navigation even on the high seas, the document should have the effect of repelling wrongs of any sort, it is an incidental advantage only, of which they avail themselves, and is by no means to be misconstrued into a right to exact such a proof, or to make any disadvantageous inference from the want of it.

Were it even admitted that certificates for protection might be justly required in time of war from American seamen, they could only be required in cases, where the lapse of time from its commencement had given an opportunity for the American seamen to provide themselves with such a document. Yet it is certain, that in a variety of instances, seamen have been impressed from American vessels, on the plea that they had not this proof of citizenship, when the dates and places of the impressments, demonstrated the impossibility of their knowing, in time to provide the proof, that a state of war had rendered it necessary.

Whether, therefore, we consult the law of nations, the tenor of treaties, or the dictates of reason and justice, no warrant, no pretext can be found for the British practice of making impressments from American vessels on the high seas.

Great Britain has the less to say in excuse for this practice, as it is in direct contradiction to the principles on which she proceeds in other cases. Whilst she claims and seizes on the high seas, her own subjects voluntarily serving in American vessels, she has constantly given, when she could give, as a reason for not discharging from her service American citi-

zens, that they had voluntarily engaged in it. Nay more, whilst she impresses her own subjects from the American service, although they may have been settled and married and even naturalized in the United States, she constantly refuses to release from hers, American citizens impressed into it, whenever she can give for a reason that they were either settled, or married within her dominions. Thus, when the voluntary consent of the individual favors her pretensions, she pleads the validity of that consent. When the voluntary consent of the individual stands in the way of her pretensions, it goes for nothing! When marriage or residence can be pleaded in her favor, she avails herself of the plea. When marriage and residence and even naturalization are against her, no respect whatever is paid to either? She takes by force her own subjects voluntarily serving in our vessels. She keeps by force American citizens involuntarily serving in hers. More flagrant inconsistencies cannot be imagined,

Notwithstanding the powerful motives which ought to be felt by the British government to relinquish a practice which exposes it to so many reproaches, it is foreseen that objections of different sorts will be pressed on you. You will be told first of the great number of British seamen in the American trade, and of the necessity for their services in time of war and danger. Secondly, of the right and the prejudice of the British nation with respect to what are called the British or narrow seas, where its domain would be abandoned by the general stipulation required. Thirdly, of the use which would be made of such a sanctuary as that of American vessels for desertions and traitorous communications to her enemies, especially across the channel to France.

1st. With respect to the British seamen serving in our trade, it may be remarked first, that the number though considerable, is probably less than may be supposed. Secondly, that what is wrong in itself

cannot be made right by considerations of expediency or advantage. Thirdly, That it is proved by the fact, that the number of real British subjects gained by the practice in question, is of inconsiderable importance, even in the scale of advantage. The annexed report to congress on the subject of impressments, with the addition of such cases as may be in the hands of Mr. Erving, will verify the remark in its application to the present war. The statement made by his predecessor during the last war, and which is also annexed, is in the same view still more conclusive. The statement comprehends not only all the applications made by him in the first instance, for the liberation of impressed seamen, between the month of June 1797, and September 1801, but many also which had been made previous to this agency by Mr. Pinckney and Mr. King, and which it was necessary for him to renew. These applications therefore may fairly be considered as embracing the greater part of the period of the war ; and as applications are known to be pretty indiscriminately made, they may further be considered as embracing, if not the whole, the far greater part of the impressments, those of British subjects as well as others. Yet the result exhibits 2,059 cases only, and of this number, 102 seamen only detained as being British subjects, which is less than $\frac{1}{20}$ of the number impressed, and 1142 discharged or ordered to be so, as not being British subjects, which is more than half of the whole number, leaving 805 for further proof, with the strongest presumption that the greater part, if not the whole, were Americans or other aliens, whose proof of citizenship had been lost or destroyed, or whose situation would account for the difficulties and delays in producing it. So that it is certain, that for all the British seamen gained by this violent proceeding, more than an equal number who were not so, were the victims. It is highly probable that for every British seaman so gained, a number of others not less

than ten for one must have been the victims, and it is even possible that this number may have exceeded the proportion of twenty to one.

It cannot therefore be doubted, that the acquisition of British seamen by these impressments, whatever may be its advantage, is lost in the wrong done to Americans, ignorantly or wilfully mistaken for British subjects; in the jealousy and ill will excited among all maritime nations by an adherence to such a practice; and in the particular provocation to measures of redress on the part of the United States, not less disagreeable to them than embarrassing to Great Britain, and which may threaten the good understanding which ought to be faithfully cultivated by both. The copy of a bill brought into congress under the influence of violations committed on our flag, gives force to this latter consideration. Whether it will pass into a law, and at the present session, is more than can yet be said. As there is every reason to believe that it has been proposed with reluctance, it will probably not be pursued into effect, if any hope can be supported, of a remedy by an amicable arrangement between the two nations. But such is the feeling through this country, produced by the reiterated and atrocious cases of impressments and other insults on our flag, that a remedy of some kind will ere long be called for in a tone not to be disregarded. A copy of the bill referred to is herewith inclosed.

There is a further consideration which ought to have weight in this question. Although the British seamen employed in carrying on American commerce, be in some respects lost to their own nation, yet such is the intimate and extensive connexion of this commerce, direct and circuitous, with the commerce, the manufactures, the revenue and the general resources of the British nation, that in other respects, its mariners on board American vessels may truly be said to be rendering it the most valuable services. It would not be extravagant to make it a question, whe-

ther Great Britain would not suffer more by withdrawing her seamen from the merchant vessels of the United States, than her enemies would suffer from the addition of them to the crews of her ships of war and cruisers.

Should any difficulty be started concerning seamen born within the British dominions, and naturalized by the United States since the treaty of 1783, you may remove it by observing, first, that very few if any such naturalizations can take place, the law here requiring a preparatory residence of five years, with notice of the intention to become a citizen entered of record two years before the last necessary formality, besides a regular proof of good moral character, conditions little likely to be complied with by ordinary seafaring persons. Secondly, that a discontinuance of impressments on the high seas will preclude an actual collision between the interfering claims. Within the jurisdiction of each nation, and in their respective vessels on the high seas, each will enforce the allegiance which it claims. In other situations, the individuals doubly claimed will be within a jurisdiction independent of both nations.

2d. The British pretensions to domain over the narrow seas are so obsolete, and so indefensible, that they never would have occurred as a probable objection in this case, if they had not actually frustrated an arrangement settled by Mr. King with the British ministry, on the subject of impressments from American vessels on the high seas. At the moment when the articles were expected to be signed, an exception of the "narrow seas" was urged and insisted on by lord St. Vincent, and being utterly inadmissible on our part, the negotiation was abandoned. Mr. King seems to be of opinion, however, that with more time than was left him for the experiment, the objection might have been overcome. This is not improbable, if the objection was not merely an expedient for evading a relinquishment of a favorite practice.

The objection in itself has certainly not the slightest foundation. The time has been indeed, when England not only claimed but exercised pretensions scarcely inferior to full sovereignty over the seas surrounding the British isles, and even as far as Cape Finistere to the south, and Vanstaten in Norway, to the north. It was a time however, when reason had little share in determining the law and the intercourse of nations; when power alone decided questions of right; and when the ignorance and want of concert among other maritime countries facilitated such an usurpation. The progress of civilization and information has produced a change in all those respects, and no principle in the code of public law, is at present better established, than the common freedom of the seas, beyond a very limited distance from the territories washed by them. This distance is not indeed fixed with absolute precision. It is varied in a small degree by written authorities; and perhaps it may be reasonably varied, in some degree, by local peculiarities. But the greatest distance which would now be listened to any where, would make a small proportion of the narrowest part of the narrowest seas in question.

What are in fact the prerogatives claimed and exercised by Great Britain over these seas? If they were really a part of her domain, her authority would be the same there as within her other domains. Foreign vessels would be subject to all the laws and regulations framed for them, as much as if they were within the harbors or rivers of the country. Nothing of this sort is pretended. Nothing of this sort would be tolerated. The only instances in which these seas are distinguished from other seas, or in which Great-Britain enjoys within them any distinction over other nations, are first, the compliment paid by other flags to hers; secondly, the extension of her territorial jurisdiction in certain cases to the distance of four leagues from the coast. The first is a relic of anci-

ent usurpation, which has thus long escaped the correction, which modern and more enlightened times have applied to other usurpations. The prerogative has been often contested however, even at the expense of bloody wars, and is still borne with ill will and impatience by her neighbors. At the last treaty of peace at Amiens, the abolition of it was repeatedly and strongly pressed by France, and it is not improbable that at no remote day it will follow the fate of the title of "King of France" so long worn by the British monarchs, and at length so properly sacrificed to the lessons of a magnanimous wisdom. As far as this homage to the British flag has any foundation at present, it rests merely on long usage and long acquiescence, which are construed, as in a few other cases of maritime claims, into the effect of a general though tacit convention. The second instance is the extension of the territorial jurisdiction to four leagues from the shore. This too, as far as the distance may exceed that which is generally allowed, rests on a like foundation, strengthened perhaps by the local facility of smuggling, and the peculiar interest which Great-Britain has in preventing a practice affecting so deeply her whole system of revenue, commerce and manufactures, whilst the limitation itself to four leagues necessarily implies that, beyond that distance no territorial jurisdiction is assumed.

But whatever may be the origin or the value of these prerogatives over foreign flags in one case, and within a limited portion of these seas in another, it is obvious that neither of them will be violated by the exemption of American vessels from impressments, which are now connected with either, having never been made on the pretext either of withholding the wonted homage to the British flag, or of smuggling in defiance of British laws.

This extension of the British law to four leagues from the shore is inferred from an act of parliament passed in the year 1736, (9 G. 2 C. 35) the terms

of which comprehend all vessels, foreign as well as British. It is possible, however, that the former are constructively excepted. Should your inquiries ascertain this to be the case, you will find yourself on better ground than the concession here made.

With respect to the compliment paid to the British flag, it is also possible that more is here conceded than you may find to be necessary. After the peace of 1783, this compliment was peremptorily withheld by France, in spite of the remonstrances of Great-Britain ; and it remains for your inquiry, whether it did not continue to be refused, notwithstanding the failure at Amiens to obtain from Great-Britain a formal renunciation of the claim.

From every view of the subject it is reasonable to expect, that the exception of the narrow seas, from the stipulation against impressments, will not be inflexibly maintained. Should it be so, your negotiation will be at an end. The truth is, that so great a proportion of our trade direct and circuitous passes through those channels, and such is its peculiar exposure in them to the wrong practised, that with such an exception, any remedy would be very partial. And we can never consent to purchase a partial remedy by confirming a general evil, and by subjecting ourselves to our own reproaches, as well as to those of other nations.

3d. It appears as well by a letter from Mr. Thornton, in answer to one from me, of both which copies are inclosed, as from conversations with Mr. Merry, that the facility which would be given, particularly in the British channel, by the immunity claimed for American vessels, to the escape of traitors, and the desertion of others whose services in time of war may be particularly important to an enemy, forms one of the pleas for the British practice of examining American crews, and will be one of the objections to a formal relinquishment of it.

This plea, like all others, admits a solid and satisfactory reply. In the first place, if it could prevail

at all against the neutral claim, it would authorize the seizure of the persons described only, and in vessels bound to a hostile country only; whereas the practice of impressing is applied to persons few if any of whom are alleged to be of either description, and to vessels whithersoever bound, even to Great Britain herself. In the next place, it is not only a preference of a smaller object on one side to a greater object on the other; but a sacrifice of right on one side, to expediency on the other side.

Considering, nevertheless, the possible adherence of the British government to this last objection, and the extreme importance to our sea-faring citizens and commerce, of a stipulation suppressing a practice flagrant in its nature, and still more so in the abuses inseparable from it, you are left at liberty to concur, if necessary, in the modification as it stands in the second column. You will observe that this guards, in all cases, the crews of our vessels from being meddled with; and in referring for an exception to the immunity on board our vessels to the law of nations, yields no principle maintained by the United States; inasmuch as the reference will be satisfied by the acknowledged exception of enemies in military service. Should persons therefore, other than such, be taken under pretext of the law of nations, the United States will be free to contest the proceeding, and there is the less difficulty in leaving the stipulation on this footing, as the case may never happen, and will be pretty sure to happen but rarely. You will observe also, that in the passage from one port to another of the respective countries, the vessels of the neutral parties are to protect all persons without exception. Independently of the general principle asserted by the United States, this respect is due to the peculiar character of the coasting trade, and the utter improbability that it will at any time be a vehicle to persons of any obnoxious description.

On Article II.

The reasonableness of this article is manifest. Citizens or subjects of one country residing in another, though bound by their temporary allegiance to many common duties, can never be rightfully forced into military service, particularly external service, nor be restrained from leaving their residence when they please. The law of nations protects them against both, and the violation of this law by the avowed impressment of American citizens residing in Great-Britain, may be pressed with the greater force on the British government, as it is in direct inconsistency with her impressment of her own subjects bound by much stronger ties to the United States, as above explained, as well as with the spirit of her commercial laws and policy, by which foreigners are invited to a residence. The liberation of the persons comprehended by this article, therefore, cannot be justly or honorably refused, and the provision for their recompence and their return home, is equally due to the service rendered by, and the wrong done to them.

On Article III.

This regulation is conformable to the law of nations, and to the tenor of all treaties which define the belligerent claim of visiting and searching neutral vessels. No treaty can be cited in which the practice of compelling the neutral vessel to send its boat, its officers, its people or its papers, to the belligerent vessel, is authorized. British treaties, as well as those to which she is not a party, in every instance where a regulation of the claim is undertaken, coincide with the article here proposed. The article is in fact almost a transcript of the article of the treaty of 1786 between Great-Britain and France.

The regulation is founded in the best reasons. 1st, It is sufficient for the neutral that he acquiesces in the

interruption of his voyage, and the trouble of the examination, imposed by the belligerent commander. To require a positive and active co-operation on his part in behalf of the latter, is more than can be justified on any principle. 2d. The belligerent party can always send more conveniently to the neutral vessel, than this can send to the belligerent vessel, having neither such fit boats for the purpose, especially in a rough sea, nor being so abundantly manned. 3d. This last consideration is enforced by the numerous and cruel abuses committed in the practice of requiring the neutral vessel to send to the belligerent. As an example you will find in the documents now transmitted, a case where neither the smallness and leakiness of the boat, nor the boisterous state of the weather, nor the pathetic remonstrances of the neutral commander, had any effect on the imperious injunctions of the belligerent, and where the task was performed at the manifest peril of the boat, the papers, and the lives of the people. The limitation of the number to be sent on board the neutral vessel is a reasonable and usual precaution against the danger of insults and pillage.

On Article IV.

This enumeration of contraband articles is copied from the treaty of 1781 between Great-Britain and Russia. It is sufficiently limited, and that treaty is an authority more likely than any other to be respected by the British government. The sequel of the article, which protects the productions of a hostile colony converted into neutral property, is taken from the same model, with the addition of the terms "in any case or on any pretext." This addition is meant to embrace more explicitly, our right to trade freely with the colonies at war with Great-Britain, and between them and all parts of the world, in colonial productions, being at the time not enemy's, but neutral

property ; a trade equally legitimate in itself with that between neutral countries directly, and in their respective vessels and such colonies, which her regulations do not contest.

In support of this right, in opposition to the British doctrine, that a trade not allowed by a nation in time of peace, cannot be opened to neutrals in time of war, it may be urged, that all nations are in the practice of varying more or less in time of war, their commercial laws, from the state of these laws in time of peace ; a practice agreeable to reason as well as favorable to neutral nations ; that the change may be made in time of war, on considerations not incident to a state of war, but on such as are known to have the same effect in time of peace ; that Great-Britain herself is in the regular practice of changing her navigation and commercial laws, in times of war, particularly in relation to a neutral intercourse with her colonies ; that at this time she admits a trade between neutral countries and the colonies of her enemies, when carried on directly between them, or between the former and herself, interrupting only a direct trade between such colonies and their parent state, and between them and countries in Europe, other than those to which the neutral trade may respectively belong ; that as she does not contest the right of neutrals to trade with hostile colonies, within these limitations, the trade can be, and actually is carried on indirectly between such colonies and all countries, even those to which the colonies belong : and, consequently, that the effect of her doctrine and her practice, is not to deprive her enemy of their colonial trade, but merely to lessen the value of it in proportion to the charges incident to the circuitous course into which it is forced, an advantage to her which if just in itself, would not be sufficient to balance the impolitic vexations accruing to neutral and friendly nations.

These views of the subject have entered into my conversations with Mr. Merry. He expresses, not-

withstanding, a belief that Great-Britain will turn an unfavorable ear to any proposition calculated to give her enemies the resources of their colonial trade, beyond the degree in which her present regulations permit. This is doubtless to be apprehended, but considering the proposition as an article which may find a balance in the general bargain, it may not be inadmissible ; or if inadmissible in the extent proposed, a middle ground may perhaps be accepted. The colonial trade in question consists of four branches ; first, between the colonies and Great-Britain herself ; secondly, between the colonies and the neutral countries carrying on the trade ; thirdly, between the colonies and neutral countries not themselves carrying on the trade ; fourthly, between the colonies and the countries to which they belong, or which are parties to the war with Great-Britain.

The first and second branches are those with which her own regulation accord. The last is that to which her aversion will of course be the strongest. Should this aversion be unconquerable, let it be tried then, and then only, whether on our yielding, or rather omitting that point, she will not yield to us in return, the direct trade between hostile colonies and neutral countries generally. You will be careful, however, so to modify the compromise as will mark as little as may be, a positive relinquishment of the direct trade between the belligerent nations and their colonies.

Should such a compromise be altogether rejected, you will limit the article to the simple enumeration of contraband, it being desirable that without a very valuable consideration, no precedent should be given by the United States of a stipulated acknowledgment that free ships do not make free goods. And you will omit the article altogether, if a proper list of contraband cannot be agreed on, particularly one that excludes money, provisions and naval stores.

On Article V.

This article taken from the convention of 1800, between the United States and France, is conformable to the general practice of the prize courts in the latter, and is the more worthy of adoption every where, as it would contribute so much to the consistency and stability of the rules of admiralty proceedings. Without a single objection justly lying against it, it will have the important advantages of being a check on the inferior tribunals, of enabling the superior tribunal where a faulty reason appears on the face of the sentence, to correct the wrong without delay or expense, and of being a check moreover on the decision of the superior tribunal itself. As prize causes also are tried by courts not of a third party, but of one of the parties interested, it is but reasonable that the ground should be known to the other on which judgment has passed against its citizens or subjects, in order, if deemed proper, that negotiation may be employed for redressing past or guarding against future injustice.

On Article VI.

The fictitious blockades proclaimed by Great-Britain, and made the pretext for violating the commerce of neutral nations, has been one of the greatest abuses ever committed on the high seas. During the late war they were carried to an extravagance which would have been ridiculous, if in their effects they had not inflicted such serious and extensive injuries on neutral nations. Ports were proclaimed in a state of blockade, previous to the arrival of any force at them, were considered in that state without regard to intermissions in the presence of the blockading force, and the proclamations left in operation after its final departure, the British cruizers during the whole time seizing every vessel bound to such ports, at whatever

distance from them, and the British prize courts pronouncing condemnations whenever a knowledge of the proclamation at the time of sailing could be presumed, although it might afterwards be known that no real blockade existed. The whole scene was a perfect mockery, in which fact was sacrificed to form, and right to power and plunder. The United States were among the greatest sufferers ; and would have been still more so, if redress for some of the spoliations proceeding from this source, had not fallen within the provisions of an article in the treaty of 1794.

From the effect of this and other arbitrary practices of Great-Britain, on the temper and policy of neutral nations towards her ; from the spirit of her treaty made near the close of the late war with Russia, from the general disposition manifested at the beginning of the present towards the United States, and the comparative moderation observed in Europe with respect to blockades ; (if indeed the two cases of the Weser and Elbe are not to be excepted) it was hoped that the mockeries and mischiefs practised under the name of blockades, would no where be repeated. It is found, however, that the West-Indies are again the theatre of them. The three entire and extensive islands of Martinique, Guadaloupe and St. Domingo have been published as in a state of blockade, although the whole naval force applied to the purpose is inconsiderable ; although it appears that a part of this inconsiderable force is occasionally seen at the distance of many leagues at sea ; although it does not appear that more than one or two ports at most, have at any time been actually blockaded ; and although complaints are heard, that the British ships of war do not protect their own trade, against the numerous cruizers from the islands under this pretended blockade.

Inclosed herewith are three letters on this subject ; two from me, the first to Mr. Thornton, the second

to Mr. Merry, and the third from Mr. Merry to me. You will observe that he does not pretend to justify the measures pursued in the West-Indies; but on the contrary wishes them to be regarded as proceeding from an officer who does not pursue the intentions of his government. Still such measures prove that no general regulations or orders have been yet issued by that government against the evil, as might reasonably have been expected, and that a stipulated security against it, is an object as important as it is just.

In the two letters to Mr. Thornton and Mr. Merry, the ground is marked out on which you will be able to combat the false blockades, and to maintain the definition of a real one, contained in the proposed article which is a literal copy from the 4th article of the Russian treaty above cited. In addition to these letters, you will find inclosed a letter of the of to Mr. Pinckney, in which some views are taken of the subject, which may also be of use in your discussions with the British government.

On Article VII.

This article is due, if not to all neutrals, at least to the United States, who are distinguished by the distance of their situation. Decisions of the British court of admiralty, have so far respected this peculiarity as to admit a want of information as a plea for going to a blockaded port, where such a plea would be refused to less remote countries. But more than this may fairly be claimed. A vessel, knowing that a particular blockade existed two months before, may well conjecture that before her arrival at the port, which will require two months more, the blockade will have ceased; and may accordingly clear and steer for such a port with an honest intention, in case of finding on her approach, the fact otherwise, not to attempt an unlawful entrance. To condemn vessels under such circumstances would be manifestly un-

just ; and to restrain them from a distant voyage to a port once in a state of blockade, until information of a change shall have travelled a like distance, must produce a delay and uncertainty little short of an absolute prohibition of the commerce. To require them even to go out of their course, to seek at other ports, information on the subject, would be an unreasonable imposition. The British government can have little objection to this article, after defining blockades as is agreed with Russia, and as is here proposed ; since our distance is of itself a security against any concert with the blockaded, for surreptitious entries, which might be attempted by nearer adventurers ; and since in the case of blockades by a force actually present, a preliminary notice may be required without impairing their efficacy, as might be the case with blockades, such as the preceding article guards against.

The only difference between the articles as standing in the different columns, consists in the preamble to that which is to be admitted, if the proposition of the other should not succeed. The article is preferable without the recital of any reason particular to the United States, because as a naked stipulation, it strengthens instead of weakening a general principle friendly to neutral and pacific nations.

On Articles VIII, IX and X.

These are articles which are known to have been long wished and contemplated on the part of Great-Britain, and together with the justice, and in many views the expediency to Great-Britain herself of the articles desired on our part, may induce her to accede to the whole. The articles are in substance the same with a project offered to the American administration in the year 1800, by Mr. Liston, who appears to have borrowed it from corresponding stipulations in the convention between the United States and France in the year

The project was at that

time dropped, owing perhaps in part to the change in the head of the department of state, between whom and Mr. Liston it had been discussed, and principally, to the difficulty of combining with it, proper stipulations against British impressments on the high seas. Without such an equivalent, the project had little to recommend it to the United States. Considered by itself, it was too the less admissible, as one of its articles, under some obscurity of expression, was thought to favor the British pretension to impress British seamen from American vessels on the high seas.

A copy of this document is inclosed, as it may be not without use, in shewing the ideas of the British government at that time, so far at least as its minister here was an organ of them.

The terms in which these articles are to be proposed, differ but slightly from those in which they may be admitted. In the former, the delivery of deserters is confined to soldiers and seamen, without requiring a delivery of officers, whose desertion will not be from the service of their country, but on account of offences for which it might sometimes be more agreeable to the United States to be unbound to give them up for trial and punishment. At the same time this consideration ought not to be a bar to an arrangement, which, in its general character, will be so important to the interests of the United States.

On Article XI.

This is a stipulation which is not to be yielded but in the event of its being made an indispensable condition. It cannot be essential for the object of it, whilst the British government is left free to take the precautions allowable within its own jurisdiction for preventing the clandestine departure of its seamen or its soldiers in neutral vessels. And it is very ineligible to the United States, inasmuch as it will be dif-

ficult to enforce the prohibition, whether we regard the embarkation of such persons in British ports, or their landing on the American shores; and inasmuch as the inefficacy of regulations for such purposes, though made with due sincerity and care, may become a source of secret jealousy and dissatisfaction, if not of controversy and reproach.

The article is copied from that in the arrangement (of which you have a copy) discussed and brought near to a conclusion between Mr. King and the British ministry, and you are authorized to accede to it, on the supposition that it may again be insisted on. It is to be recollected, however, that the article was then understood to be the only price given for relinquishing the impressment of American seamen. The other offers now substituted will justify you in pressing the omission of the original one.

On Article XII.

The law of nations does not exact of neutral powers the prohibition specified in this article. On the other hand, it does not restrain them from prohibiting a trade which appears on the face of the official papers proceeding from the custom-house to be intended to violate the law of nations, and from which legitimate considerations of prudence may also dissuade a government. All that can be reasonably expected by belligerent from neutral powers, is that their regulations on this subject be impartial, and that their stipulations relative to it, when made in time of war at least, should not preclude an impartiality.

It is not certain what degree of value Great-Britain may put on this article, connected, as it essentially is, with the article which limits the list of contraband. It will at least mitigate her objection to such a limitation. With the range given to contraband by her construction of the law of nations, even as acquiesced in by the United States, a stipulation of this sort would be utterly inadmissible.

The last article, in making this city the place for exchanging the ratifications, consults expedition in putting the treaty into operation, since the British ratification can be forwarded at the same time with the instrument itself. And it is otherwise reasonable, that as the negotiation and formation of the treaty will have taken place at the seat of the British government, the concluding formality should be at that of the government of the United States.

In addition to these articles which, with the observations thereon, I am charged by the president to communicate to you as his instructions, he leaves you at liberty to insert any others which may do no more than place British armed vessels, with their prizes, on an equality within our ports and jurisdiction with those of France. This would only stipulate what would probably be done by gratuitous regulations here, and as it would no doubt be acceptable to Great-Britain, it may not only aid in reconciling her to the principal objects desired by the United States, but may induce her to concur in the further insertion of articles, corresponding with those in the convention of 1800 with France, which regulate more precisely and more effectually, the treatment of vessels of the neutral party on the high seas.

The occasion will be proper also, for calling the attention of the British government to the reasonableness of permitting American consuls to reside in every part of her dominions, where, and so long as she permits our citizens to trade. It is not denied that she has a natural right to refuse such a residence, and that she is free by her treaty with us, to refuse it in other than her European dominions. But the exception authorized with respect to the residence of consuls elsewhere, having reference to the refusal of our trade elsewhere, the refusal of the one ought manifestly to cease with the refusal of the other. When our vessels and citizens are allowed to trade to ports in the West-Indies, there is the same reason for a co-

temporary admission of consuls to take care of it, as there is for their admission in ports where the trade is permanently allowed. There is the juster expectation of your success on this point, as some official patronage is due to the rights of our citizens in the prize courts established in the West-India islands. Should the British government be unwilling to enter into a stipulated provision, you may, perhaps, obtain an order to the governors for the purpose. Or if consuls be objected to altogether, it is desirable that agents may be admitted, if no where else, at least in the islands where the vice-admiralty courts are established.

It has been intimated that the articles as standing in the different columns, are to be considered, the one as the offer to be made, the other as the ultimatum to be required. This is however, not to be taken too strictly ; it being impossible to foresee the turns and the combinations which may present themselves in the course of the negotiation. The essential objects for the United States are the suppression of impressments, and the definition of blockades. Next to these in importance, are the reduction of the list of contraband, and the enlargement of our neutral trade with hostile colonies. Whilst you keep in view therefore, those objects, the two last as highly important, and the two first as absolutely indispensable, your discretion, in which the president places great confidence, must guide you in all that relates to the inferior ones.

With sentiments of great respect and esteem,

I remain, sir,

Your most obedient servant,

(Signed)

JAMES MADISON.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,

February, 14, 1804.

SIR,

You will herewith receive the ratification by the president and senate, of the convention with the British government signed on the 12th of May, 1803, with an exception of the 5th article. Should the British government accede to this change in the instrument, you will proceed to an exchange of ratifications and transmit the one received without delay, in order that the proper steps may be taken for carrying the convention into effect. As the same considerations which led to the arrangements settled by it, urge a prompt execution of them, it may be expected that the steps depending on that government will be hastened. As far as your exhortations may be requisite, you will of course apply them.

The objection to the Vth. article appears to have arisen from the posteriority of the signature and ratification of this convention to those of the last convention with France, ceding Louisiana to the United States, and from a presumption that the line to be run in pursuance of the Vth. article might thence be found or alleged to abridge the northern extent of that acquisition.

It may reasonably be expected that the British government will make no difficulty in concurring in this alteration, because

First. It would be unreasonable that any advantage against the United States should be constructively authorized by the posteriority of the dates in question : the instructions given to enter into the convention, and the understanding of the parties at the time of signing it, having no reference whatever to any territorial rights of the United States acquired by the

previous convention with France, but referring merely to the territorial rights as understood at the date of the instructions for, and signature of the British convention. The copy of a letter from Mr. King, hereto annexed, is precise and conclusive on this subject.

Secondly. If the Vth. article be expunged, the north boundary of Louisiana will, as is reasonable, remain the same in the hands of the United States as it was in the hands of France, and may be adjusted and established according to the principles and authorities which would in that case have been applicable.

Thirdly. There is reason to believe that the boundary between Louisiana and the British territories north of it, were actually fixed by commissioners appointed under the treaty of Utrecht, and that this boundary was to run from the Lake of the Woods, westwardly in lat. 49, in which case the Vth. article would be nugatory, as the line from the Lake of the Woods to the nearest source of the Mississippi, would run through territory which on both sides of the line would belong to the United States. Annexed is a paper stating the authority on which the decision of the commissioners under the treaty of Utrecht rests : and the reasoning opposed to the construction making the 49th deg. of latitude the northern boundary of Louisiana, with marginal notes in support of that construction. This paper will put you more readily into possession of the subject as it may enter into your discussions with the British government. But you will perceive the necessity of recurring to the proceedings of the commissioners, as the source of authentic information. These are not within our reach here, and it must consequently be left to your own researches and judgment to determine the proper use to be made of them.

Fourthly. Laying aside, however, all the objections to the Vth. article, the proper extension of a dividing

line in that quarter will be equally open for friendly negotiation after, as without, agreeing to the other parts of the convention ; and considering the remoteness of the time at which such a line will become actually necessary, the postponement of it is of little or no consequence. The truth is that the British government seemed at one time to favor this delay, and the instructions given by the United States readily acquiesced in it. The annexed extracts from Mr. King's and Mr. Gore's letters, will, with that from the department of state, explain this observation.

The fourth article of the convention provides, that the commissioners shall be respectively paid in such manner as shall be agreed between the two parties, such agreement to be settled at the time of the exchange of ratifications. It has been supposed that the compensation allowed to the commissioners under the treaty of amity, commerce and navigation, who settled the St. Croix boundary, would be satisfactory to the British government ; and upon this idea the estimate, of which a copy is inclosed, was framed as the basis of an appropriation to be asked from congress. The president authorizes you, therefore, to agree to the sum mentioned therein, viz. $\$ 4,444 \frac{44}{100}$ to be paid by each government to the commissioner appointed by itself, the same sum being allowed the third commissioner, to be paid to him in equal portions by the two governments. Should, however, the British government insist upon a variation of the compensation from the sum above mentioned, you may consent to it, provided it does not exceed $\$ 6,666 \frac{66}{100}$, each party contributing equally to the payment, and each commissioner receiving the same sum as his colleagues.

I have the honor to be, &c.

(Signed)

JAMES MADISON.

(EXTRACT.)

Mr. Madison, secretary of state, to Mr. Monroe.

DATED, DEPARTMENT OF STATE,

March 5, 1804.

" The treaty of 1794, so far as it relates to commerce, having expired on the 1st day of October last, (that being the date of the preliminary articles) the commercial intercourse between the two countries is left to the regulations which the parties separately may think fit to establish. It may be expected, however, that the friendship and mutual interest between them, will produce a continuance on both sides of such regulations as are just and equal, and an accommodation to those principles of such as, on either side, are otherwise than just and equal. On the side of the United States, their commercial regulations place Great Britain in every respect on the footing of the most favored nation. Great Britain cannot say as much with respect to hers. One instance at least is explained in a letter from this department to Mr. King, of which a copy is inclosed, in which you will see that although the act of parliament to which it refers be no longer a breach of stipulation, it is not less a violation of equality than it is of sound policy. With respect to the British West Indies, it is not known that the United States are on a worse footing than other nations, whatever want of reciprocity there may be to the liberal regulations of the United States. With respect to the East India trade, it is understood that the treaty of 1794, by denying to American vessels both the coasting branch of it and a direct intercourse between India and foreign countries, other than America, the United States were in both instances placed on a worse footing than other nations, and even on a worse footing than they themselves enjoy-

ed prior to the treaty. The expiration of the treaty, and the friendly and favorable equality allowed by the United States to Great Britain in every branch of their trade, ought certainly to restore what the treaty suspended.

These observations are made not with a view to any negotiation whatever leading at the present moment to a treaty on those or any other commercial points, or to discussions which might be misconstrued into a wish to take unreasonable advantage of a critical moment, but to enable you to present the ideas of your government with more precision, to vindicate our commercial policy against misconceptions, and to avail yourself the better of fit occasions for obtaining from the British government such relaxations as may be due to our example, and be calculated to cherish amity and useful intercourse between the two nations.

“ In my letter of _____ I stated the reasonableness of admitting American consuls in the dependencies of Great Britain, whenever and wherever the American commerce should be admitted. The principle urged in this case is applicable to the East as well as to the West Indies. During the last war an American agent was informally at least allowed to reside at Calcutta and take care of the trade of his countrymen. Mr. Jacob Lewis, who was appointed to succeed him, proceeded to London on his way thither, but peace having intervened, his application for an exequatur was refused. It is of real importance to our trade with that country, that such a functionary should be permitted to reside in it ; the more so if it be true, that the rule forbidding foreign factors to do so be enforced there. Be so good as to sound the British government on this subject, and communicate its sentiments for the information of the president.”

Extract of a letter from Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,

March 6, 1805.

SIR,

“ The experience of every day shews more and more the obligation on both sides to enter seriously on the means of guarding the harmony of the two countries against the dangers with which it is threatened by a perseverance of Great Britain in her irregularities on the high seas, and particularly in the impressments from American vessels. The extent in which these have taken place since the commencement of the war will be seen by the inclosed report required from this department by a vote of the house of representatives ; and the call for it, whilst negotiations on the subject were understood to be in train, is itself a proof of the public sensibility to those aggressions on the security of our citizens and the rights of our flag. A further proof will be seen in the motion, also inclosed, which was made by Mr. Crowninshield, and which will probably be revived at the next session. This motion, with his remarks on it, appear very generally in the newspapers, with comments proceeding from a coincidence of the sensibility out of doors with that within. A still stronger proof of impatience under this evil will be found in the proceedings authorized by an act of congress just passed, and which is likewise inclosed, against British officers committing on the high seas trespasses or torts on board American vessels, offences manifestly including cases of impressment.

“ In communicating these circumstances it will occur to you that whilst they may be allowed to proclaim the growing sensibility of the United States on the subject of impressments, they ought, by proper explanations and assurances, to be guarded against a misconstruction into marks of illiberal or hostile sentiments towards Great Britain. The truth is, and it

may be so stated by you, that this practice of impressments, aggravated by so many provoking incidents, has been so long continued, and so often in vain remonstrated against, that, without more encouragement than yet appears to expect speedy redress from the British government, the United States are in a manner driven to the necessity of seeking for some remedy dependent on themselves alone. But it is no less true that they are warmly disposed to cherish all the friendly relations subsisting with Great Britain; that they wish to see that necessity banished by just and prudent arrangements between the two governments; and that with this view you were instructed to open the negotiations which are now depending. It is impossible for the British government to doubt the sincerity of these sentiments. The forbearance of the United States year after year, and war after war, to avail themselves of those obvious means, which without violating their national obligations of any sort, would appeal in the strongest manner to the interest of Great Britain, is of itself a sufficient demonstration of the amicable spirit which has directed their public councils. This spirit is sufficiently manifested also by the propositions which have been lately made through you, and by the patience and cordiality with which you have conducted the negotiation. I might add, as a further proof to the same effect, that notwithstanding the refusal of which we have official information, from Glasgow and Liverpool particularly, to restore American seamen deserting their ships in British ports, the laws of many of the states have been left, without interruption, to restore British deserters. One of the states, Virginia, has even at the last session of its legislature passed an act for the express purpose of restoring such deserters, which deserves the more attention as it was done in the midst of irritations resulting from the multiplied irregularities committed by British ships in the American seas.

“ Mr. Merry has expressed some inquietude with respect to the clause in the act above referred to, which animadvertes on British trespasses on board American vessels ; and his language on several late occasions has strongly opposed the expectation that Great Britain will ever relinquish her practice of taking her own subjects out of neutral vessels. I did not conceal from him my opinion that the terms “ trespass, &c.” would be applicable to the impressment of British subjects as well as others, or that the United States would never accede to that practice. I observed to him that every preceding administration had maintained the same doctrine with the present on that point, and that such were the ideas and feelings of the nation on it, that no administration would dare so far to surrender the rights of the American flag. He expressed dissatisfaction also at the section which requires certain compliances on the part of British ships of war entering our harbors with arrangements to be prescribed by the collectors. He did not deny the right of the nation to make what rules it might please in such cases, but apprehended that some of them were such as the commanders might deem incompatible with their just pretensions, especially when subjecting them to the discretion of so subaltern an authority as that of the collectors, and consequently that the law would have the unfriendly effect of excluding British ships of war altogether from American ports. He was reminded in reply that the collectors were, according to the terms of the section, to be guided in the exercise of their power by the directions of the president ; and it was not only to be presumed, but he might be particularly assured, that the directions given would be consistent with the usages due to public ships, and with the respect entertained for nations in amity with the United States. He asked whether, in transmitting the act to his government, as his duty would require, he might add the explanation and assurances he had heard from

me. I answered, that, without having received any particular authority for that purpose from the president, I could safely undertake that what I had stated was conformable to his sentiments.

Inclosed is another act of congress, restraining and regulating the arming of private vessels by American citizens. This act was occasioned by the abuse made of such armaments in forcing a trade, even in contraband of war, with the island of St. Domingo, and by the representations made on the subject of that trade by the French *chargé des affaires* and minister here, and by the British minister, with respect to abuses which had resulted or might result from such armaments in cases injurious to Great Britain. A report of these representations, as made to the president, is herewith inclosed. The act, in substituting a security against the unlawful use of the armaments in place of an absolute prohibition of them, is not only consistent with the obligations of a neutral nation, but conformable to the laws* and ordinances of Great Britain and France themselves, and is consequently free from objections by either. The interposition of the government, though claimed in behalf both of Great Britain and of France, was most pressed in behalf of the latter. Yet the measure, particularly as it relates to the shipment of contraband articles for the West Indies, is likely to operate much more conveniently for Great Britain than for France, who cannot, like Great Britain, otherwise insure a supply of these articles for the defence of their colonies.

“ In the project which you have offered to the British government I observe you have subjoined a clause for securing respect to certificates of citizenship. The effect of this clause, taken as it ought to be, and as was doubtless intended, in context with the preceding clause, is limited to the case provided for in that

* See act of parliament 35 G. 3, c. 92, s. 37-8, and Valin's Commentaries Liv. 1, Tit. 10, art. 1.

clause. Still it may be well, in order to guard against the possibility of its being turned into a pretext for requiring such certificates in other cases, that a proviso for the purpose be added, or that words of equivalent restriction be inserted.

Another subject requiring your attention is pointed at by the resolutions of the senate moved by general Smith, on the subject of a British tax on exports under the name of a convoy duty. A copy of the resolution is inclosed. A duty under that name was first laid in the year 1798. It then amounted to half of one per cent. on exports to Europe, and one per cent. on exports to other places, and consequently to the United States. The discrimination being evidently contrary to the treaty then in force, became a subject of discussion between Mr. King and the British ministry. His letters to the secretary of state and to lord Grenville, explain the objections urged by him, and the pretexts in support of the measure alleged by them. The subject was resumed in my letter of 5th March, 1804, to Mr. King, with a copy of which you have been already furnished. It was received by Mr. Gore, during the absence of Mr. King on the continent; and if any occasion was found proper by either for repeating the remonstrance against the duty, it appears to have been without effect. Whilst the treaty was in force, the discrimination was unquestionably a violation of its faith. When the war ceased, it lost the pretext that it was the price of the convoy, which giving a longer protection to the American than to the European trade, justified a higher price for the former than for the latter. Even during war the exports are generally made as American property and in American vessels, and therefore with a few exceptions only, a convoy which would subject them to condemnation, from which they would otherwise be free, would be not a benefit but an injury. Since the expiration of the treaty, the discrimination as well as the duty itself can be combated by no other argu-

ments than those, which in the document referred to are drawn from justice, friendship, and sound policy ; including the tendency of the measure to produce a discontinuance of the liberal but unavailing example given to Great Britain by the regulations of commerce on our side, and a recurrence to such counteracting measures as are probably contemplated by the mover of the resolutions of the senate. All these arguments gain strength in proportion to the augmentations which the evil has latterly received ; it being now stated that the duty amounts to four per cent. on the exports to the United States. These, according to Cocke's answer to Sheffield, amounted in the year 1801, to about seven and a half millions sterling, and therefore levy a tax on the United States, of about 1,300,000 dollars. From this is indeed to be deducted a sum proportioned to the amount of re-exportations from the United States. But on the other hand, is to be added the increase of the exports since the year 1801, which probably exceed the re-exportations.

With the aid of these communications and remarks, you will be at no loss for the views of the subject most proper to be presented to the British government, in order to promote the object of the resolutions ; and the resolutions themselves ought powerfully to second your efforts, if the British government feels the same desire as actuates the United States, to confirm the friendship and confidence on both sides by a greater conformity on that side to the spirit of the commercial regulations on this.

I have referred above to the inclosed copy of the motion made by Mr. Crowninshield in the house of representatives. The part of it which has relation to the trade with the West-Indies, was suggested, as appears in his introductory observations, by the late proclamations of the British West-India governors, excluding from that trade vessels of the United States, and certain articles of our exportations, particularly

fish, even in British vessels. These regulations are to be ascribed partly to the attachment of the present administration in Great-Britain to the colonial and navigation system, partly to the interested representations of certain merchants and others residing in the British provinces on the continent. Without entering at large into the policy on which the colonial restrictions are founded, it may be observed that no crisis could be more ineligible for enforcing them, than the present, because at none more than the present, have the West-Indies been absolutely dependent on the United States for the supplies essential to their existence. It is evident in fact, that the United States, by asserting the principle of a reasonable reciprocity, such as is admitted in the trade with the European ports of Great Britain, and as is admitted even in the colonial trade of other European nations, so far at least as respects the vessels employed in the trade, might reduce the British government at once to the dilemma of relaxing her regulations or of sacrificing her colonies; and with respect to the interdict of supplies from the United States, of articles necessary to the subsistence and prosperity of the West-Indies, in order to force the growth and prosperity of the continental provinces of Nova-Scotia, &c. what can be more unjust than thus to impoverish one part of the foreign dominions, which is considered as a source of wealth and power to the parent country, not with a view to favor the parent country, but to favor another part of its foreign dominions which is rather expensive than profitable to it? What can be more preposterous than thus, at the expense of islands which not only contribute to the revenue, commerce and navigation of the parent state, but can be secured in their dependence by that naval ascendancy which they aid, to foster unproductive establishments?

Considerations, such as these, ought to have weight with the British government, and may very properly enter into frank conversations with its ministry on

favorable occasions. However repugnant that government may be to a departure from its system, in the extent contemplated by Mr. Crowninshield's motion, it may at least be expected that the trade as opened in former wars, will not be refused under circumstances which, in the present, particularly demand it. It may be hoped that the way will be prepared for some permanent arrangement on this subject between the two nations, which will be conformable to equity, to reciprocity, and to their mutual advantage.

I have the honor to be, &c.

(Signed)

JAMES MADISON.

(COPY.)

From Mr. Madison, secretary of state, to Mr. Monroe, minister plenipotentiary of the United States at London.

DEPARTMENT OF STATE;

April 12, 1805.

SIR,

The papers herewith inclosed explain particularly the case of the brig *Aurora*.

The sum of the case is, that whilst Spain was at war with Great Britain, this vessel, owned by a citizen of the United States, brought a cargo of Spanish produce, purchased at the Havanna, from that place to Charleston, where the cargo was landed, except an insignificant portion of it, and the duties paid or secured according to law, in like manner as they are required to be paid or secured, on a like cargo from whatever port, meant for home consumption; that the cargo remained on land about three weeks, when it was re-shipped for Barcelona in old Spain, and the duties drawn back, with a deduction of three and a half per cent. as is permitted to imported articles in all

cases, at any time within one year, under certain regulations which were pursued in this case; that the vessel was taken on her voyage by a British cruizer, and sent for trial to Newfoundland, where the cargo was condemned by the court of vice-admiralty; and that the cause was carried thence by appeal to Great Britain, where it was apprehended that the sentence below would not be reversed.

The ground of this sentence was, and that of its confirmation, if such be the result, must be, that the trade in which the vessel was engaged was unlawful; and this unlawfulness must rest, first, on the general principle assumed by Great Britain, that a trade from a colony to its parent country, being a trade not permitted to other nations in time of peace, cannot be made lawful to them in time of war; secondly, on the allegation that the continuity of the voyage from the Havanna to Barcelona was not broken by landing the cargo in the United States, paying the duties thereon, and thus fulfilling the legal pre-requisites to a home consumption; and, therefore, that the cargo was subject to condemnation, even under the British regulations of January, 1798, which so far relaxes the general principle as to allow a direct trade between a belligerent colony and a neutral country carrying on such a trade.

With respect to the general principle which disallows to neutral nations in time of war, a trade not allowed to them in time of peace, it may be observed,

First, that the principle is of modern date; that it is maintained, as is believed, by no other nation but Great Britain, and that it was assumed by her under the auspices of a maritime ascendancy, which rendered such a principle subservient to her particular interest. The history of her regulations on this subject shews that they have been constantly modified under the influence of that consideration. The course of these modifications will be seen in an appendix to the 4th volume of Robinson's Admiralty Reports.

Secondly, that the principle is manifestly contrary to the general interest of commercial nations, as well as to the law of nations settled by the most approved authorities, which recognizes no restraints on the trade of nations not at war, with nations at war, other than that it shall be impartial between the latter ; that it shall not extend to certain military articles, nor to the transportation of persons in military service, nor to places actually blockaded or besieged.

Thirdly, that the principle is the more contrary to reason and to right, inasmuch as the admission of neutrals into a colonial trade shut against them in times of peace, may, and often does result from considerations which open to neutrals direct channels of trade with the parent state, shut to them in times of peace, the legality of which latter relaxation is not known to have been contested ; and inasmuch as a commerce may be, and frequently is opened in time of war, between a colony and other countries, from considerations which are not incident to the war, and which would produce the same effect in a time of peace ; such, for example, as a failure or diminution of the ordinary sources of necessary supplies, or new turns in the course of profitable interchanges.

Fourthly, that it is not only contrary to the principles and practice of other nations, but to the practice of Great-Britain herself. It is well known to be her invariable practice in time of war, by relaxations in her navigation laws, to admit neutrals to trade in channels forbidden to them in times of peace ; and particularly to open her colonial trade both to neutral vessels and supplies, to which it is shut in times of peace, and that one at least of her objects in these relaxations, is to give to her trade an immunity from capture, to which in her own hands it would be subjected by the war.

Fifthly, the practice which has prevailed in the British dominions, sanctioned by orders of council and an act of parliament, [39 G. 3, C. 98] authorizing for

British subjects a direct trade with the enemy, still further diminishes the force of her pretensions for depriving us of the colonial trade : thus we see in Robinson's Admiralty Reports passim, that during the last war a licensed commercial intercourse prevailed between Great-Britain and her enemies, France, Spain and Holland, because it comprehended articles necessary for her manufactures and agriculture, notwithstanding the effect it had in opening a vent to the surplus productions of the others. In this manner she assumes to suspend the war itself, as to particular objects of trade beneficial to herself, whilst she denies the right of the other belligerents to suspend their accustomed commercial restrictions in favor of neutrals. But the injustice and inconsistency of her attempt to press a strict rule on neutrals is more forcibly displayed by the nature of the trade which is openly carried on between the colonies of Great-Britain and Spain in the West-Indies. The mode of it is detailed in the inclosed copy of a letter, wherein it will be seen that American vessels and cargoes, after being condemned in British courts under pretence of illicit commerce, are sent on British account to the enemies of Great-Britain, if not to the very port of the destination interrupted when they were American property. What respect can be claimed from others to a doctrine not only of so recent an origin, and enforced with so little uniformity, but which is so conspicuously disregarded in practice by the nation itself which stands alone in contending for it ?

Sixthly. It is particularly worthy of attention that the board of commissioners jointly constituted by the British and American governments, under the 7th article of the treaty of 1794, by reversing condemnations of the British courts, founded on the British instructions of November, 1793, condemned the principle that a trade forbidden to neutrals in time of peace, could not be opened to them in time of war,

on which precise principle these instructions were founded. And as the reversal could be justified by no other authority than the law of nations, by which they were to be guided, the law of nations, according to that joint tribunal, condemns the principle here combated. Whether the British commissioners concurred in these reversals, does not appear; but whether they did or did not, the decision was equally binding, and affords a precedent which could not be disrespected by a like succeeding tribunal, and ought not to be without great weight with both nations in like questions recurring between them.

On these grounds the United States may justly regard the British captures and condemnations of neutral trade with colonies of the enemies of Great Britain, as violations of right; and if reason, consistency, or that sound policy which cannot be at variance with either, be allowed the weight which they ought to have, the British government will feel sufficient motives to repair the wrongs done in such cases by its cruizers and courts.

But, apart from this general view of the subject, a refusal to indemnify the sufferers in the particular case of the *Aurora*, is destitute of every pretext; because, in the second place, the continuity of her voyage was clearly and palpably broken, and the trade converted into a new character.

It has been already noted that the British regulation of 1798, admits a direct trade in time of war, between a belligerent colony and a neutral country, carrying on the trade; and admits, consequently, the legality of the importation by the *Aurora*, from the Havanna to Charleston. Nor has it ever been pretended that a neutral nation has not a right to re-export to any belligerent country whatever, foreign productions, not contraband of war, which may have been duly incorporated and naturalized, as a part of the commercial stock of the country re-exporting it.

The question then to be decided under the British regulation itself, is, whether in landing the cargo,

paying the duties, and thus as effectually qualifying the articles for the legal consumption of the country, as if they had been its native productions, they were not at the same time equally qualified with native productions for exportation to a foreign market. That such ought to be the decision, results irresistibly from the following considerations.

First. From the respect which is due to the internal regulations of every country, where they cannot be charged with a temporizing partiality towards particular belligerent parties, or with fraudulent views towards all of them. The regulations of the United States on this subject, must be free from every possible imputation; being not only fair in their appearance, but just in their principles, and having continued the same during the periods of war, as they were in those of peace. It may be added, that they probably correspond, in every essential feature relating to re-exportations, with the laws of other commercial countries, and particularly with those of Great Britain. The annexed outline of them, by the secretary of the treasury, will at once explain their character, and shew that, in the case of the *Aurora*, every legal requisite was duly complied with.

2d. From the impossibility of substituting any other admissible criterion than that of landing the articles, and otherwise qualifying them for the use of the country. If this regular and customary proceeding be not a barrier against further inquiries, where, it may be asked, are the inquiries to stop? By what evidence are particular articles to be identified on the high seas, or before a foreign tribunal? If identified, how is it to be ascertained, whether they were imported with a view to the market at home, or to a foreign market; or, as ought always to be presumed, to the one or the other, as it should happen to invite? or if to a foreign market, whether to one forbidden or permitted by the British regulations? for it is to be recollected, that among the modifications which her

policy has given to the general principle asserted by her, a direct trade is permitted to a neutral carrier from a belligerent colony to her ports, as well as to those of his own country. If, again, the landing of the goods and the payment of the duties, be not sufficient to break the continuity of the voyage, what, it may be asked, is the degree of internal change or alienation which will have that effect? May not a claim be set up to trace the articles from hand to hand, from ship to ship, in the same port, and even from one port to another port, as long as they remain in the country? In a word, in departing from the simple criterion provided by the country itself, for its own legitimate and permanent objects, it is obvious, that besides the defalcations which might be committed on our carrying trade, pretexts will be given to cruizers for endless vexations on our commerce at large, and that a latitude and delays will accrue in the distant proceedings of admiralty courts, still more ruinous and intolerable.

3d. From the decision in the British high court of admiralty itself, given in the case of the *Polly, Lasky*, master, by a judge deservedly celebrated for a profound judgment, which cannot be suspected of leaning towards doctrines unjust or injurious to the rights of his own country. On that occasion he expressly declares "it is not my business to say what is universally the test of a bona fide importation: it is argued, that it would not be sufficient that the duties should be paid and that the cargo should be landed. If these criteria are not to be resorted to, I should be at a loss to know what should be the test; and I am strongly disposed to hold, that it would be sufficient, that the goods should be landed and the duties paid." 2 *Robinson's report*, p. 368-9.

The president has thought it proper that you should be furnished with such a view of the subject, as is here sketched: that you may make the use of it best suited to the occasion. If the trial of the *Aurora*

should not be over it is questionable whether the government will interfere with its courts. Should the trial be over, and the sentence of the vice admiralty courts at St. Johns have been confirmed, you are to lose no time in presenting to the British government a representation corresponding with the scope of these observations; and in urging that redress in the case, which is equally due to private justice, to the reasonable expectations of the United States, and to that confidence and harmony which ought to be cherished between the two nations.

The effect of the doctrine involved in the sentence of the court in Newfoundland, on our carrying trade, will at once be seen by you. The average amount of our re-exportations for three years, ending 30th September, 1803, has been 32,003,921 dollars. Besides the mercantile and navigation profits, the average revenue from drawbacks, on goods re-exported for three years, ending 31st December, 1803, is 184,271 dollars, to which is to be added an uncertain but considerable sum, consisting of duties paid on articles re-exported, after having lost, through neglect or lapse of time, the privilege of drawback. A very considerable portion of this branch of trade, with all its advantages, will be cut off, if the formalities heretofore respected, are not to protect our re-exportations. Indeed it is difficult to see the extent to which the apprehended innovation may be carried in theory, or to estimate the mischief which it may produce in practice. If Great Britain, disregarding the precepts of justice, suffers herself to calculate the interest she has in spoliating or abridging our commerce, by the value of it to the United States, she ought certainly not to forget that the United States must, in that case, calculate by the same standard, the measures which the stake will afford, for counteracting her unjust and unfriendly policy.

I have the honor to be, &c.

(Signed)

JAMES MADISON.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE;

January 13, 1806:

SIR,

The letters received from you since my last, are down to No. 36, inclusive.

The perseverance of the British government in the principle which licenses the depredations on our commerce in colonial productions, with the losses already sustained, and still apprehended by our merchants, has produced a very general indignation throughout this country, and makes it necessary that you should renew and extend your remonstrances on the subject. In aid of the means for this purpose furnished by the information and instructions given you from time to time, I forward you an examination of it just published, in which you will find a variety of facts and views of the British principle and proceedings that may be made to bear against them. I will forward, also, in a few days, copies of sundry memorials from the merchants of our maritime cities, explaining the wrongs done them, and the disgust with which they are filled. These, with other documents accompanying them, will assist your endeavors to make on the British government the impressions which the occasion calls for.

I shall only add at present, that notwithstanding the conviction of the illegality of the British principle, which becomes more and more evident, the more it is investigated, the president so far yields to a spirit of conciliation, as to be still willing to concur in the adjustment on that point authorized in your instructions of January 5th, 1804 ; but expects and enjoins that you will be particularly careful to use such forms of expression as will furnish no pretext for considering an exception of the direct trade between a belligerent nation and its colonies, as *declaratory* of a li-

mitation of the neutral right, and not a positive stipulation founded on considerations of expediency.

I have the honor to be, &c.

(Signed)

JAMES MADISON.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,

April 23, 1806.

SIR,

Your last letter bears date on the 12th of February. Those of the 18th October, 11th, 26th November, 11th and 23d December, and 28th January, had been previously received.

Congress adjourned the evening before the last. The gazettes before and herewith sent, will give you a general view of the proceedings of the session. As soon as the laws passed shall be ready, a complete copy of them will be forwarded. For the present I inclose only a copy of the act shutting our market after the 15th Nov. next, against certain articles of British manufacture. Notwithstanding the hope that the new ministers of Great Britain bring into the cabinet dispositions more just and favorable to the United States than their predecessors, it was thought most consistent both with self respect and with sound policy, not to allow a change of persons, without an actual or promised change of measures, to arrest the meditated course of remedial provisions. You will not fail, however, by due explanations, to guard the act against the imputation of motives and views of a nature to excite feelings on the other side, unfriendly to a fair estimate of their true interests. You may with confidence affirm, that a resort to such a manifestation of the sensibility of this country to wrongs so long continued, and of late so grievously extended, has been had with the most sincere reluctance ; and

that nothing is necessary on the part of Great Britain to smooth the way to perfect cordiality, and to all the beneficial intercourses of commerce, but a redress which the United States are willing to limit to the clearest demands of justice and right. As a proof of their solicitude to bring about a final and amicable adjustment of all points in question between the two countries, and of their readiness to establish the principles of navigation and commerce in a form that will extend the latter, and render the former no longer a source of discord, the measure has been adopted of appointing yourself and Mr. Pinkney, of Baltimore, commissioners extraordinary and plenipotentiary for those purposes. The objects of the appointment, as described in the terms of it, are "to settle all matters of difference between the United States and the united kingdom of Great-Britain and Ireland, relative to wrongs committed between the parties on the high seas, or other waters, and for establishing the principles of navigation and commerce between them."

No time will be lost in preparing the instructions for your joint negotiation, and Mr. Pinkney will doubtless not fail to be ready to embark with as little delay as possible.

With great respect, &c.

• (Signed) JAMES MADISON.

*Extract of a letter from Mr. Madison to Mr. Monroe;
Dated, May 15, 1806.*

"Since my last of the 23d of April. I have received your several letters of the 28th February and 11th March.

"This will be put into the hands of Mr. Pinkney, whose appointment jointly with you by a commission extraordinary, has been already communicated, and who proceeds to London with the powers and instruc-

tions for carrying the joint commission into effect. This you will find embraces a larger field of negotiation and convention, than fell within the instructions heretofore given you, in your capacity of minister plenipotentiary alone. The commission extraordinary, therefore, will not be without important objects, even if those previously committed to yourself should fortunately have been obtained. Mr. Pinkney carries with him also a commission and letter of credence, as your successor, in case you should persist in your intention of returning after the occasion which suspended it shall be over. A letter of farewell, also, for yourself, goes by him, of the same provisional character.

“As the joint commission does not include the subject of the convention of limits, not yet acceded to by Great Britain as varied by the senate here, it will remain with you alone, or your successor, to continue the endeavors to bring that business to a conclusion.

“If any repugnance should be shewn to the erasure of the 5th article, as proposed by the senate, and thereby leaving unsettled for the present, the boundaries in the north-west quarter of the union, and preference should be given to a proviso against any constructive effect of the Louisiana convention, on the intention of the parties at the signature of the depending convention, you may concur in the alteration, with a view to bring the subject in that form before the ratifying authority of the United States.

“I must observe to you, however, that either another proviso, or a clear understanding to the same effect, or at least an understanding that the question is open for future settlement, will be proper, in order to supersede pretensions which the British government may otherwise found on their possession of the island of Grand Menan, and the silence of the instrument with respect to it. This island is of considerable extent, is clearly within the general limits of the United States as fixed by the treaty of peace, and is under

stood not to be within the exception made by the treaty, of islands appurtenant to Nova-Scotia, since all such islands must be either west, east, or north of the coast of that province, and within six leagues thereof; whereas the island of Grand Menan is nearly due south of the nearest part of the coast, and is either in the whole or with the exception of a mere point, beyond the distance of six leagues. No just title can therefore be alleged on the British side, and care would have been taken to guard against a pretended one by a clause to that effect, if the facts of British settlement, and the exercise of British jurisdiction had been known at the time. The documents now transmitted will sufficiently explain the subject, and enable you to annex a proper clause to the convention. One of these documents will give you a view at the same time of a late case in which an American vessel bringing plaister of Paris from Nova-Scotia to the United States, was condemned. In strictness of law the condemnation may have been not objectionable, but considering the continuance of the trade for a length of time, and the official sanction added to the usage, the case makes a very strong appeal to the equity and liberality of the British government. The dependence of the British settlements in that quarter, on supplies from the United States more essential to them than plaister is to us, suggests other considerations not unworthy of attention. These, however, will be brought most advantageously into view in one of the branches of the joint negotiation."



*Extract of a letter from Mr. Madison to Mr. Monroe,
Dated, May 22, 1807.*

"In my letter of March 18, to the joint commission, it was signified that in a conventional arrangement on the subject of boundaries, it would be

inconsistent with the views of the president, to open any part of Louisiana to a British trade with the Indians. From the evident solicitude of the British government on this point, it is highly probable that the determination of the president will be a bar to any adjustment of that part of the differences between the two countries ; nor is it very probable, considering the jealousy and want of information on the British side, that independently of that obstacle, the adjustment would at this time be concluded. That you may not, however, be without any information which might contribute to its accuracy, or put you on your guard against propositions militating against any of our just pretensions, I transmit herewith copies of a communication from the governor of New York, and of another from the governor of Vermont. With respect to the last it may be sufficient merely to save the right of correcting the alleged error at a future day. With respect to the subject of the former, it may be proper either to leave that also open to future discussion, or rather to provide for a joint examination and report relative to the islands and channels in the St. Laurence, &c. The most obvious and convenient demarkation would seem to be the channel best fitted for navigation. But as a more equal division of the islands might possibly be made without losing sight of a sufficient channel for common use, and as military positions may be involved in the case, it may be most safe and satisfactory to both parties, to proceed on more thorough and impartial information than is now possessed by either. I address these communications to our ordinary minister at London, merely because the subject has not been formally transferred to the joint commissioners. They will of course be for the use of the latter, if this branch of the negotiation should remain in their hands.

*Extract of a letter from Mr. Monroe to
Mr. Madison, dated,*

LONDON, MARCH 18, 1804.

“ I shall pay all the attention to the instructions contained in your letter of the 5th of January, which is due to their great importance. As soon as I am sufficiently possessed of the subject, I shall ask a conference with lord Hawkesbury, to propose to his government a convention between the two nations for the adjustment of the points, and on the principles of the project you have sent me. I hope to be able to commence the business in a week or ten days, and flatter myself that the negotiation will be productive of real advantage to the United States. Should it even not succeed in all its objects, the attempt must nevertheless be considered as a very satisfactory proof of a strong desire in our government to preserve, on just ground, the friendship of this country, and is likely, by the explanations to which it may lead alone, to have that tendency. I am, however, far from thinking it improbable that a suitable convention may be formed, especially on some of the points that are deemed interesting.”

*Extract of a letter from Mr. Monroe to Mr. Madison,
Dated, London, April 15, 1804.*

“ Soon after my last I requested an interview with lord Hawkesbury, which took place on the 2d instant, in which I informed him that I had received your instructions to propose to his government the regulation by convention of certain points which I was persuaded both countries would find their advantage in placing on explicit and equitable ground. I stated to his lordship the concerns it was desired thus to re-

gulate, in which I complied strictly with your views, and assured him that the object of the president was to fix the friendship of the two nations on the most solid basis, by removing every cause which had a tendency in their intercourse or other relations, especially in time of war, to disturb it. In the conversation I entered into detail on every point, in which I was met by his lordship with an apparent candor, the sincerity of which I had no reason to doubt, which manifested a disposition equally strong in favor of the professed, and indeed real object of the proposed negotiation. He requested me in the conclusion to furnish him a project, which he promised to submit to his cabinet, and to communicate to me the result of its deliberations on it as soon as he could. I have since sent him a project, but too recently to admit my obtaining an answer to it. I am inclined to think, from what passed in the conference, that some advantage may be fairly expected from the negotiation. His lordship did not bind himself to any thing it is true ; he even went so far as to express a wish that the principles of our treaty of 1794 might be adopted in the present convention where they applied ; and an expectation that if the accommodation which had been given in certain cases to the northern powers should be stipulated in our favor, that we should accord fully what they had yielded in return. Although I was very desirous to do justice to the moderate and friendly views of our government on the occasion, yet I did not fail to give him to understand that I could not accede to his idea in either case. I shall endeavor to bring the business to a conclusion and apprise you of the result as soon as possible, when I shall also communicate fully and in detail an account of what passes between us in the course of the transaction."

I am, with great respect, &c.

(Signed)

JAMES MONROE.

*Extract of a letter from Mr. Monroe to Mr. Madison.
Dated, London, August 7, 1804.*

“I received a note from lord Harrowby on the 3d instant, requesting me to call on him at his office the next day, which I did. His lordship asked me in what light was our treaty viewed by our government. I replied that it had been ratified with the exception of the 5th article, as I had informed him on a former occasion. He observed that he meant the treaty of 1794, which by one of its stipulations was to expire two years after the signature of preliminary articles, for concluding the then existing war between Great Britain and France. He wished to know whether we considered the treaty as actually expired. I said, that I did presume there could be but one opinion on that point in respect to the commercial part of the treaty, which was that it had expired: that the first 10 articles were made permanent; that other articles had been executed, but that then, being limited to a definite period which had passed, must be considered as expiring with it. He said it seemed to him doubtful whether the stipulation of the treaty had been satisfied by what had occurred since the peace: that a fair construction of it might possibly require an interval of two years peace after the war, which had not taken place in point of form, much less so in fact, for the state of things which existed between the countries through that period was far from being a peaceable one. I informed his lordship that the distinction had never occurred to us, though certainly it would receive from our government all the consideration which it merited, especially if it was relied on, on his part. After some further conversation, he seemed to admit that the construction he had suggested, of the stipulation referred to, was rather a forced one; that by the more obvious import of the article, the commercial part of the treaty must be

considered as having expired. What then, says he, is the subsisting relation between the two countries? Are we in the state we were, at the close of the American war? By what rule is our intercourse to be governed respecting tonnage, imposts and the like? I said that the law in each country, as I presumed, regulated these points. He replied that the subject was nevertheless under some embarrassment here. He asked how far it would be agreeable to our government to stipulate that the treaty of 1794, should remain in force until two years should expire after the conclusion of the present war? I told his lordship that I had no power to agree to such a proposal; that the president, animated by a sincere desire to cherish and perpetuate the friendly relations subsisting between the two countries, had been disposed to postpone the regulation of their general commercial system till the period should arrive, when each party, enjoying the blessings of peace, might find itself at liberty to pay the subject the attention it merited; that he wished those regulations to be founded in the permanent interests, justly and liberally viewed, of both countries; that he sought for the present only to remove certain topics which produced irritation in the intercourse, such as the impressment of seamen, and in our commerce with other powers, parties to the present war, according to a project which I had had the honor to present his predecessor some months since, with which I presumed his lordship was acquainted. He seemed desirous to decline any conversation on this latter subject, though it was clearly to be inferred from what he said, to be his opinion, that the policy which our government seemed disposed to pursue in respect to the general system, could not otherwise than be agreeable to his. He then added that his government might probably, for the present, adopt the treaty of 1794, as the rule in its own concerns, or in respect to duties on importations from our country, and, as I understood him, all other sub-

jects to which it extended; in which case he said, if the treaty had expired, the ministry would take the responsibility on itself, as there would be no law to sanction the measure: that in so doing, he presumed that the measure would be well received by our government, and a similar practice in what concerned Great Britain, reciprocated. I observed, that on that particular topic I had no authority to say any thing specially, the proposal being altogether new and unexpected; that I should communicate it to you, and that I doubted not that it would be considered by the president with the attention it merited. Not wishing, however, to authorize an inference that that treaty should ever form a basis of a future one between the two countries, I repeated some remarks which I had made to lord Hawesbury in the interview which we had just before he left the department of foreign affairs, by observing that in forming a new treaty we must begin *de novo*; that America was a young and thriving country; that at the time that treaty was formed, she had had little experience of her relations with foreign powers; that 10 years had since elapsed, a great portion of the term within which she had held the rank of a separate and independent nation, and exercised the powers belonging to it; that our interests were better understood on both sides at this time than they then were; that the treaty was known to contain things that neither liked; that I spoke with confidence on that point on our part; that in making a new treaty, we might ingraft from that into it, what suited us, omit what we disliked, and add what the experience of our respective interests might suggest to be proper; and being equally anxious to preclude the inference of any sanction to the maritime pretensions of Great Britain under that treaty, in respect to neutral commerce, I deemed it proper to advert again to the project, which I had presented some time since for the regulation of those points, to notice its contents, and express an earnest

wish that his lordship would find leisure and be disposed to act on it. He excused himself again from entering into this subject, from the weight and urgency of other business, the difficulty of the subject, and other general remarks of the kind. I told him that the most urgent part of the subject was that which respected our seamen; that our government wished to adopt a remedy which would be commensurate with the evils complained of by both countries. His government complained that deserters from their ships in America were not restored to them; ours, that our seamen were impressed in their ports (those of G. B.) and on the high seas, in our vessels, and sometimes in our bays and rivers; that such injuries ought to be put an end to, and that we were willing to adopt a fair and efficacious remedy for the purpose. He said he was afraid, however well disposed our government might be to give the aid of the civil authority to restore deserters to their vessels in the United States, that little advantage could be derived from such a stipulation. The bias and spirit of the people would be against it, with us, as it was here, under favor of which deserters would always find means to elude the most active search of the most vigilant peace officers. I replied that I did not think the difficulty would be found so great as he supposed; that our people were very obedient to the law in all cases; that as soon as the apprehension and restoration of deserting seamen to their vessels was made a law, as it would be, by becoming the stipulation of a treaty, the public feeling on that point would change, especially when it was considered as the price of a stipulation which secured from impressment their fellow citizens, who might be at sea, or in a foreign country; that sailors never retired far into the interior, or remained where they went long, but soon returned to the seaport towns, to embark again in the sea service; that it was not likely they would be able to elude the search of the magistracy, supported

as it would be by the government itself. I found, on the whole, that his lordship did not wish to encourage the expectation that we should agree in any arrangement on this head, though he was equally cautious not to preclude it. I left him without asking another interview, and the affair, of course, open to further communication."

*Project of a Convention presented to lord Hawkesbury,
April 7, 1804.*

Article 1. No person shall, upon the high seas, and without the jurisdiction of the other party, be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the other parties, by the public or private armed ships belonging to, or in the service of the other, unless such person be at the time in the military service of an enemy of such other party.

Art. 2. No person, being a subject or citizen of one of the parties, and resorting to, or residing in the dominions of the other, shall, in any case, be compelled to serve on board any vessel, whether public or private, belonging to such other party; and all citizens and subjects whatever of the respective parties at this time compulsively serving on board the vessels of the other, shall be forthwith liberated and enabled by an adequate recompense to return to their own country.

A certified list of the crew, or protection from either government, in such form as they shall respectively prescribe, shewing that the person claiming under it is a citizen or subject of either power, shall be deemed satisfactory evidence of the same. And in all cases where these documents may have been lost, destroyed, or by casualty not obtained, and any person claims to be a citizen or subject of either power, such other evidence of said claim shall be received and admitted as would be satisfactory in a court of judicature.

Art. 3. If the ships of either of the parties shall be met sailing either along the coasts or on the high seas by any ship of war, or other public or private armed ship of the other party, such ships of war, or other armed vessels, shall, for avoiding all disorder in visiting and examining the same, remain out of cannon shot, unless the state of the sea or place of meeting render a nearer approach necessary, and shall in no case compel or require such vessel to send her boat, or her papers, or any person from on board to the belligerent vessel; but the belligerent vessel may send her own boat to the other and may enter her to the number of two or three men only, who may in an orderly manner examine the same, and it is agreed that effectual provision shall be made for preventing violations of any part of this article.

Art. 4. In order to determine what characterizes a blockaded port, that denomination is given only to a port where there is, by the dispositions of the power which attacks it with ships stationary or sufficiently near, an evident danger in entering.

Art. 5. It is agreed that no vessel sailing from the ports of either party shall, although cleared and bound to a blockaded port, be considered as violating in any manner the blockade, unless in her approach towards such port she shall have been previously warned against entering the same.

Art. 6. It is agreed that no refuge or protection shall be afforded by either party to the mariners, sailors, or other persons, not found to be its own citizens or subjects, who shall desert from a vessel of the other party, of the crew whereof the deserter made a part; but on the contrary all such deserters shall be delivered up on demand to the commanders of the vessels from which they shall have deserted, or to the commanding officers of the ships of war of the respective nations, or to such other persons as may be duly authorized to make requisition in that behalf, provided that proof be made within two years from the time of

desertion, by an exhibition of the ship's papers, or authenticated copies thereof, and by satisfactory evidence of the identity of the person, that the deserters so demanded, were actually part of the crew of the vessels in question.

And for the more effectual execution of this article adequate provision shall be made for causing to be arrested on the application of the respective consuls, or vice-consuls, to the competent authorities, all deserters duly proved to be such, in order that they may be sent back to the commanders of the vessels to which they belonged, or removed out of the country, at the request and expense of the said consuls, or vice-consuls, until they shall have found an opportunity of sending them back, or removing them as aforesaid. But if they be not so sent back or removed within three months from the day of their arrest, they shall be set at liberty, and shall not again be arrested for the same cause.

Art. 7. This convention shall be in force for the term of five years from the date of the exchange of ratifications. It shall be ratified on both sides within three months from the date of its signature, or sooner if possible, and the ratifications exchanged without delay in the United States at the city of Washington.



Paper respecting the boundary of the United States, delivered to lord Harrowby, September 5, 1804.

By the 10th article of the treaty of Utrecht it is agreed, "that France shall restore to Great Britain the bay and straits of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said bay and straits which belong thereunto, &c."

It is also agreed "that commissaries shall be forthwith appointed by each power to determine within a year the limits between the said bay of Hudson and the places appertaining to the French. And also to

describe and settle in like manner the boundaries between the other British and French colonies in those parts."

Commissaries were accordingly appointed by each power, who executed the stipulations of the treaty in establishing the boundaries proposed by it. They fixed the northern boundary of Canada and Louisiana by a line beginning on the Atlantic, at a cape or promontory in 58 degrees 30 minutes north latitude, thence south-westerly to the lake Mistasin, thence further south-west to the latitude 49 degrees north from the equator, and along that line indefinitely.

At the time this treaty was formed, France possessed Canada and Louisiana, which she connected by a chain of forts extended from the mouth of the Mississippi, on all its waters, and on the lakes, along the St. Laurence to Montreal. Her encroachments eastward on the territory of the present United States, then British provinces, extended to the foot of the Allegany mountain. It is well known that on the Ohio, at a point formed by the confluence of the Allegany and Monongahela branches, below which the stream takes the name of Ohio, that the French had built a fort which was called Duquesne : a fort which has been better known since by the name of Pittsburg. The adjustment of the boundary of the territory between the two powers in this quarter, was the result of another war and another treaty.

By the 4th article of the treaty of 1763, France ceded to Great Britain, Canada, Nova Scotia, &c. in the north, and by the seventh article, the bay and port of Mobile and all the territory which she possessed to the left of the Mississippi, except the town and island of New Orleans.

By the 7th article it was also stipulated, that a line to be drawn along the middle of the Mississippi, from its source to the river Iberville, and thence along the middle of that river and the lakes Murepas and Pontchartrain to the sea, should be the boundary be-

tween the British territory to the eastward, and Louisiana to the west. At that time it was understood, as it has been ever since, till very lately, that the Mississippi took its source in some mountain, at least as high north as the 49th degree of north latitude.

By the treaty of 1783, and between the United States and Great Britain, the boundary between those states and Nova Scotia and Canada, is fixed, by a line which is to run along the St. Croix and Highlands, bounding the southern waters of the St. Lawrence, the 45th degree of latitude to the water communication between the lakes, and along that communication to the lake of the Woods, and through that lake to the north western point thereof; thence a due west course to the Mississippi. The line follows afterwards the course of the Mississippi to the 31st degree of north latitude.

By Mitchell's map, by which the treaty of 1783 was formed, it was evident that the north western point of the lake of the Woods, was at least as high north as the latitude 49. By the observations of Mr. Thompson, astronomer to the North Western company, it appears to be in latitude 49 degrees 37 minutes. By joining then the western boundary of Canada to its northern in the lake of the Woods, and closing both there, it follows that it was the obvious intention of the ministers who negotiated the treaty, and of their respective governments, that the United States should possess all the territory lying between the lakes and the Mississippi south of the parallel of the 49th degree of north latitude. This is confirmed by the courses which are afterwards pursued by the treaty, since they are precisely those which had been established between Great Britain and France in former treaties. By running due west from the north western point of the lake of the Woods to the Mississippi, it must have been intended, according to the lights before them, to take the parallel of the 49th degree of latitude as established under the treaty of Utrecht; and by pursu-

ing thence the course of the Mississippi to the 31st degree of latitude, the whole extent of the western boundary of the United States, the boundary which had been established by the treaty of 1763 was actually adopted. This conclusion is further supported by the liberal spirit which terminated the war of our revolution, it having been manifestly the intention of the parties to heal, as far as could be done, the wounds which it had inflicted. Nor is it essentially weakened by the circumstance that the Mississippi is called for by the western course from the lake of the Woods, or that its navigation is stipulated in favor of both powers. Westward of the Mississippi, to the south of the 49th degree of north latitude, Great Britain held then no territory. That river was her western boundary. In running west and ceding the territory to the river, it was impossible not to call for it; and on the supposition that it took its source within the limits of the Hudson bay company, it was natural that it should stipulate the free navigation of the river. But in so doing it is presumed that her government respected more a delicate sense of what it might be supposed to owe to the interest of that company, than any strong motive of policy founded on the interests of Canada or its other possessions in that quarter. As Great Britain ceded at the same time the Floridas to Spain, the navigation of the Mississippi by her subjects, if it took place, being under a foreign jurisdiction, could not fail to draw from her own territories the resources which properly belonged to them, and therefore could not be viewed in the light of a national advantage.

After the treaty of 1783, and at the time the convention in contemplation was entered into, the state of things was as is above stated. The territory which Great Britain held westward of the lake of the Woods, was bounded south by the 49th degree of north latitude; that which lay between the lake of the Woods and the Mississippi southward of that parallel, belonged to the United States; and that which lay to the

west of the Mississippi to Spain. It being, however, understood by more recent discoveries or observations that the source of the Mississippi did not extend so high north as had been supposed, and Great Britain having shewn a desire to have the boundary of the United States modified in such manner as to strike that river, an article to that effect was inserted in the late convention. But in so doing it was not the intention of the American minister, or of the British minister, to do more than simply to define the American boundary. It was not contemplated by either of them, that America should convey to Great Britain any right to the territory lying westward of that line, since not a foot of it belonged to her. It was intended to leave it to Great Britain to settle the point as to such territory, or such portion of it as she might want, with Spain, or rather with France, to whom it then belonged. At this period, however, certain measures respecting the Mississippi, and movements in that quarter took place, which seemed to menace the great interests of America that were dependent on that river. These excited a sensibility, acute and universal; of which in equal degree her history furnishes but few examples. They led to a discussion which terminated in a treaty with France, by which that power ceded to the United States the whole of Louisiana, as she had received it of Spain. This treaty took place on the 30th of April, 1803, twelve days only before the convention between Great Britain and the United States was signed, and some days before the adoption of such a treaty was known to the plenipotentiaries who negotiated and signed the convention.

Under such circumstances it is impossible that any right which the United States derived under that treaty, could be conveyed by this convention to Great Britain, or that the ministers who formed the convention could have contemplated such an effect by it. Thus the stipulation which is contained in the 5th

article of the convention has become, by the cession made by the treaty, perfectly nugatory; for as Great Britain holds no territory southward of the 49th degree of north latitude, and the United States the whole of it, the line proposed by that article would run through a country which now belongs exclusively to the latter.

*Extract of a letter from Mr. Monroe to Mr. Madison,
dated London, October 3, 1804.*

“In the interview which I had with lord Harrowby, we had much general conversation on the topics depending between us, which, as it corresponded with what has passed before and communicated to you, it is unnecessary to repeat. He appeared to agree with me with great sincerity in the advantage to be derived to both countries, from the preservation of their present amicable relations, and to be quite satisfied with the state in which the negotiation was left, assuring me that he would not fail to take it up on my return, with an earnest desire to conclude it to the satisfaction of both parties; though he intimated that there was great difficulty attending certain branches of it. He suggested that as I was forced to go to Spain, he hoped that the suspension would prove equally convenient to us both, to which I assented. He thought it unnecessary for me to go to Weymouth to take leave of the king, as he kept no regular court there, and my absence would be short; he promised, however, to communicate to his majesty my request to be presented to him there, as of his undertaking to prevent it, with which view he desired me to address him a special note to that effect to be submitted to the king, a copy of which is inclosed.

In the course of this conversation lord Harrowby expressed concern to find the United States opposed to Great Britain on certain great neutral questions, in favor of the doctrines of the modern law which he

termed novelties. I replied, that in adhering to our principles, the president had endeavored to arrange them in a friendly manner with his government; that he had taken no step of an opposite character; that he had sought no concert with the neutral powers in support of them, as he had supposed that a satisfactory arrangement to both governments might be made by direct communication between them, which he preferred. He observed, that although while the negotiation was suspended, his government would adhere to its principles, yet that it would act in what concerned us, with moderation in the practice of them.

I informed you in my letter of the 8th of September, that a case had occurred of an American vessel engaged in commerce between Batavia and Holland, as was inferred, by her having an European destination, being brought into port and subjected to trial. The case is not yet decided, though in his remarks, while the cause was in hearing before the court, the judge maintained the British doctrine; it was postponed to give time to ascertain what the regulations of the government of Holland were in peace respecting our commerce with that colony. He did not say if they prohibited the trade, that he would condemn the vessel. It is probable she may be acquitted on some other point in the cause without impugning that principle. It is understood that several other vessels engaged in the same trade which were stopped and examined at the Texel by the British cruizers, were permitted to prosecute their voyage; hence it is presumable that orders were given to that effect by the governments. It is certain that on no principle or pretext whatever, has more than one of our vessels been condemned, on which judgment there is an appeal.

The whole subject is now before the president, on which I have to remark, that in discharging this trust, I have endeavored in every stage to give full effect to the feelings and sentiments of my country, in res.

pect to the objects in question, especially the unwarrantable practice of impressment, without taking any step which should compromit our government, in the part it should take, when the result was submitted to it. In that state the affair now is, for after the expiration of a few months, it is perfectly consistent with it, to revive the negotiation in such form as the president may deem advisable. The proceeding here, lays a foundation for any course which the public honor and interest may dictate. If it is deemed expedient in pursuing our just rights to profit of time and circumstances, and in the interim, unless they be sesured by a fair and equal treaty, to act with moderation till the occasion invites to a more decisive and hazardous policy, the state of things permits it. Or if it should be deemed more advisable to adopt the latter course at present, the opportunity is fair for such a measure. The situation in which our government will find itself on receiving this communication, is a very different one from that in which I have stood throughout. If the latter course is preferred, it cannot be doubted that the moderation which has been so far observed, will strengthen the government in any the most vigorous measures which may be thought necessary.

A virtuous and free people will be more united in support of such measures, however strong they may be, when they see by the clearest evidence that the cause is not only just, but that their government has done every thing in its power which the national honor and interest would permit, to avoid such an extremity."

LONDON, AUGUST 16, 1805.

SIR,

I inclose you a copy of my letters to lord Mulgrave, relative to the late seizures of our vssels by his majesty's cruizers, in the channel and north sea, and

of his replies. I had yesterday an interview with him on the subject, in which he gave me a report from each of the king's law officers in the admiralty, respecting the late decisions, and promised me another interview on that and the other topics, depending between our governments, as soon as I should desire it, after having perused the reports. By my note to him of this date, you will find that I consider these documents unsatisfactory on the great question, and have asked another interview. It appears, however, by them that no recent order has been issued by the government ; hence it is probable that the late decisions on the point of continuity of voyage, which have carried the restraints on that commerce to a greater extent than heretofore, may have furnished to the parties interested a motive for these seizures. It is equally probable that the decision of the court of appeals in the case of the *Essex*, as several of its members are also members of the cabinet, may have been dictated by policy, to promote the navigation of this country, at the expense of that of the United States. In the late interview with lord Mulgrave much general conversation took place on the subject, in which he assured me, in the most explicit terms, that nothing was more remote from the views of his government than to take an unfriendly attitude towards the United States ; he assured me that no new orders had been issued, and that his government was disposed to do every thing in its power to arrange this and the other points to our satisfaction, by which, however, I did not understand that the principle in this case would be abandoned ; though I think it probable that in other respects much accommodation may be obtained relative to that commerce.

Affairs here seem to be approaching a crisis. It is said that the combined fleets having been previously joined by the Rochefort squadron, have entered Ferrol, and that the force now there is thirty-seven sail of the line. Sir Robert Calder has joined admiral Corn-

wallis before Brest. The French fleet there consists of about twenty-six sail of the line. This force, so nearly united, is a very imposing one. The menace of invasion is kept up and increased ; every thing seems to indicate that an attempt will soon be made.

I am, sir,

With great respect and esteem,

Your very obedient servant,

JAMES MONROE.

(COPY.)

DOWNING STREET, *July* 31, 1805.

Mr. Monroe presents his compliments to lord Mulgrave, and requests the honor of an interview with his lordship, on the subjects that were depending between their governments at the time of Mr. Monroe's departure last autumn for Spain, and postponed at the instance of lord Harrowby until his return. These subjects will be found in a communication to lord Harrowby, of the 5th of September last, which contains a project of a convention to define certain neutral rights, to discriminate between American and British seamen, and protect the former from impressment, and also to establish by a modification of the convention entered into by lord Hawkesbury and Mr. King on the 12th May, 1803, in the manner proposed and for the reasons stated in that communication, the boundary between the territories of his majesty and those of the United States, on their north western frontiers. The two first mentioned of these topics have been a cause of much irritation and complaint on the part of the United States, which cannot otherwise than be increased by the principles which appear to have been adopted in some late decisions of the court of admiralty, relative to the commerce of the United States with the colo-

nies of the enemies of Great Britain, and with the parent country, in the productions of such colonies. Mr. Monroe is persuaded that it is of great importance to both countries to arrange these points between them, and he flatters himself that it will be easy to do it on terms that will be equally safe and satisfactory to both parties.

FROM LORD MULGRAVE.

No. 2. DOWNING STREET, AUGUST 5, 1805.

Lord Mulgrave presents his compliments to Mr. Monroe, and will have the honor of appointing a day for receiving him at the foreign office, early in the next week. Lord Mulgrave wishes to inform himself of the state of the business, opened to lord Harrowby, previous to his conference with Mr. Monroe.

TO LORD MULGRAVE.

No. 3. DOVER STREET, AUGUST 8, 1805.

MY LORD,

The late seizures of the vessels of the United States, by his majesty's cruizers, is so important an event, as to make it my duty to invite your lordship's attention to it. My government will naturally expect of me immediately, the best information which I can obtain, of the nature and character of the measure, the extent to which it has been, and will be carried, and of the policy which dictates it. Being in a state of profound peace with his Britannic majesty and his dominions, conscious of having cherished that relation, and performed all its duties, with the most perfect good faith, it will be surprised at a measure which will be understood to breathe a contrary spirit. From the view I have of the subject, I can only state that many of our vessels have been

brought in, under orders that were equally unknown to the parties that were affected by them, and to the representative of the United States, accredited with his majesty: that the principles on which some of them have been condemned are denied by our government, and, as it is contended, on the soundest principles of the law of nations. I wish to possess, and to give correct information on the whole subject, and shall be happy that your lordship will enable me to do it.

It would have been agreeable to me, to have postponed this enquiry until I should be honored with the interview, which I requested of your lordship on the 31st ult. and which you have been so good as to promise me next week; but the importance of the subject, the impression which the measure has made on the parties interested, and doubtless will make in the United States, together with the propriety of giving my government such information as is official and authentic only, will, I flatter myself, satisfy your lordship, that I could not justify a longer delay.

I have the honor to be, my lord,
Your lordship's most obedient humble servant,
(Signed) JAMES MONROE.

FROM LORD MULGRAVE.

No. 4. DOWNING STREET, AUGUST 9, 1805.

SIR,

I have just received the honor of your letter, of yesterday's date, stating the existence of some measures relative to the vessels of the United States, of which you have cause to complain. As you have not mentioned either the nature or the period of the transaction to which you allude, I am not enabled to give you a satisfactory answer, and I am not aware of any

recent occurrence of so pressing a nature, as to require an explanation previous to the day on which I shall have the honor of seeing you in the course of the next week. If you will inform me more particularly of the ground of complaint, I shall, without delay, give the subject every attention in my power.

I have the honor to be, sir,

Your most obedient humble servant,

(Signed)

MULGRAVE.



TO LORD MULGRAVE.

No. 5. DOVER STREET, AUGUST 12, 1805.

MY LORD,

I have been honored with your lordship's letter of the 9th instant, and shall willingly comply with your request in stating more fully the nature of the complaint to which I alluded in mine of the 8th, and the period within which it has occurred. By a report of the consul of the United States for this port and district, of which I have the honor to inclose you a copy, it appears that in the course of a few weeks past, about twenty American vessels have been seized in the channel and north sea, by his majesty's ships of war and privateers, and brought into his ports for trial: the officers who seized them stated (according to the report of some of the masters) that they acted by order, as is to be presumed, of the government. As this proceeding was sudden, without notice, and without example in the conduct of the present war, as it has embraced a considerable number of vessels, and may be extended to many others, it was impossible for me to reconcile it with the friendly relations subsisting between the two powers. It is therefore my duty to request of your lordship such information respecting it, as I may transmit without delay to my government.

Of a measure so highly important to the rights and interests of the United States, no erroneous opinion should be formed, no incorrect idea entertained. - It is proper here to observe that the decisions of the courts to which I alluded in mine of the 8th, the principles of which are considered by my government as subversive of the established law of nations, were given in the case of the "Essex," a few weeks since, and in those of the "Enoch" and "Mars," on the 23d and 24th ultimo. These decisions impose restraints on the commerce of neutral nations with the enemies of Great Britain, which, it is contended, derive no sanction from that authority. The principle on which they are founded asserts a right in Great Britain to restrain neutral nations from any commerce with the colonies of an enemy, in time of war, which they do not enjoy in time of peace; or in other words denies, in respect to neutrals, the sovereignty of an enemy in time of war, over its own colonies, which remain in other respects subject to its authority and governed by its laws. It cannot well be conceived how there should be a difference on principle, in the rights of neutral powers, to a commerce between any two ports of an enemy not regularly blockaded, and any other two of its ports; how it should be lawful to carry on such commerce from one port to another of the parent country, and not from its colonies to the parent country. As the board of commissioners under the 7th article of the treaty of 1794, in revising the decisions of the British courts, founded on the instructions of November 6th, 1793, condemned this doctrine, there was just cause to expect, that it would never have been revived. It is understood that no other power admits it, and that it is also repugnant to the practice of Great Britain herself, with respect to her own colonies in time of war. It is easy to shew that the doctrine is of modern date even in England; that the decisions of her courts have not been uniform, and that those in the cases referred to have

carried the pretension to an extent which by assuming cognizance, if not jurisdiction, in the interior concerns of the United States, is utterly incompatible with the rights of sovereignty and the self respect which as an independent nation, they can never lose sight of. I forbear, however, to enter further into this subject at present, in the expectation that I shall be honored with such information from your lordship, of the views of his majesty's government, as will be satisfactory to that which I have the honor to represent.

I have the honor to be, my lord,

(Signed) JAMES MONROE.

FROM LORD MULGRAVE.

No. 6. DOWNING STREET, *August 12, 1805.*

Lord Mulgrave presents his compliments to Mr. Monroe, and will be very happy to see him at his office on Thursday next, at two o'clock.

TO LORD MULGRAVE.

No. 7. DOVER STREET, *August 12, 1805.*

Mr. Monroe presents his compliments to lord Mulgrave, and will do himself the honor to wait on him at his office on Thursday next at two o'clock. He has the pleasure to send his lordship a reply to his letter of the 9th instant.

TO LORD MULGRAVE.

No. 8. DOVER STREET, *August 16, 1805.*

Mr. Monroe presents his compliments to lord Mulgrave, and has the honor to return his lordship the papers which he was so good as to deliver him yesterday. Mr. Monroe is sorry to find that these

documents furnish no satisfactory explanation on the real ground of complaint, on the part of the United States, as stated in his letter of the 12th: he will therefore be happy to see lord Mulgrave again on the subject, as soon as it may be convenient for his lordship to receive him.

TRIPLICATE.

LONDON, *August 20, 1805.*

SIR,

I had an interview with lord Mulgrave yesterday, on the late seizure of our vessels, which I am sorry to observe presented the prospect of a less favorable result than I had anticipated from the preceding one. He asserted the principle in the fullest extent, that a neutral power had no right to a commerce with the colonies of an enemy in time of war, which it had not in time of peace; and that every extension of it in the former state, beyond the limit of the latter, was due to the concession of Great Britain, not to the right of the neutral power. I denied the principle in equal extent, and insisted that Great Britain had no more right in war to interfere with or controul the commerce of a neutral power with the colonies of an enemy, than she had in peace. As we could not agree on the principle, I asked on what footing his government was willing to place the trade? His reply shewed that it was not disposed to relax in the slightest degree from the doctrine of the late decrees of the courts of admiralty and appeals; which go to cut up completely by the roots the whole commerce of the United States in the produce of the colonies of its enemies, other than for the home consumption of their citizens. I urged in as strong terms as I could the objections which occurred to me to this pretension, but he shewed no disposition to accommodate, so that we parted as remote from an accord as possi-

bly could be. I asked lord Mulgrave whether I should consider the sentiments which he expressed as those of his government? He said he had in the commencement expressed a desire that our conversations should be considered rather as informal, than official, as entered into more in the hope of producing an accord than in the expectation that we should ultimately disagree; that however he should report the result to the cabinet, and give me such an answer to my letters, for my government, of the views of his own, as it might wish to be taken of its conduct and policy in this business. I do not state the arguments that were used in the conference on each side, because those of lord Mulgrave will probably be furnished by himself, and you will readily conceive those to which I resorted. What the ultimate decision of his government may be, I cannot pretend to say. It is possible that he held the tone mentioned above, in the late conference, to see whether I could be prevailed on to accommodate with his views. It is difficult to believe that it will yield no accommodation on its part to our just claims in the present state of public affairs.

In my former interview with lord Mulgrave, he informed me that I should find by the reports which he gave me, that most of the vessels had been dismissed; and it appeared by the reports that some of them had been, one or two on the opinion of doctor Lawrence, counsel for the captured, which had been taken in the absence of the king's proctor. I returned to him the reports to obtain copies for you. General Lyman has informed me that others have been since dismissed, and as he thought some that had been seized on the new doctrine of continuity of voyage, though nothing to countenance such an expectation escaped from lord Mulgrave in the last conference.

It is decided on consideration of all circumstances, that Mr. Bowdoin will repair to Paris, where he will probably remain till he receives the orders of the

president, and that Mr. Erving will proceed immediately to Madrid to relieve Mr. Pinckney. Mr. Bowdoin, by being on that ground, will be more in the way of obeying such orders as he may receive than here; and both he and Mr. Erving respectively may perhaps take their ground with greater propriety in this stage, while it is known that our government has not acted, than afterwards.

I am, sir, with great respect and esteem,

Your very obedient servant,

JAMES MONROE.

No. 34.

LONDON, SEPTEMBER 25, 1805.

SIR,

I have already forwarded you copies of two letters to lord Mulgrave, respecting the late seizure of American vessels, and you will receive with this a copy of a third one. His lordship has endeavored to manage this business without writing, from a desire, which has been very apparent, to get rid of it, without any compromitment. With that view he gave me, in an early interview, a report of the king's advocate-general and proctor on my first letter, which had been referred to them, which gave some explanation on the subject, which he might suppose would be satisfactory. I soon, however, assured him that it was not, and pressed an answer to my letters, which was promised, but has not yet been given. A few days before Mr. Erving left this for the continent, I requested him to ask Mr. Hammond when I should be favored with one. I send you a note of the conversation between them. Having waited some time longer, I thought it my duty to press the point again, and in so doing to expose, as fully as I could, the fallacy and injustice of the principle on which Great Britain asserts the right, to interdict our commerce with the colonies of

her enemies and elsewhere in the production of those colonies. I do not know that I shall be able to obtain an answer to this or the other letters. The presumption is against it, because she does not wish to tie up her hands from doing what her interest may dictate, in case the new combination with Russia and Austria should be successful against France. In the mean time she seeks to tranquillize us by dismissing our vessels in every case that she possibly can. It is evident to those who attend the trials that the tone of the judge has become more moderate; that he acquits whenever he can acquit our vessels, and keeping within the precedent of the *Essex*, seizes every fact that the papers or other evidence furnish in the cases which occur, to bring them within that limit. If any thing can be done in our affairs, it may be in a week or ten days; and if not done in that time, it most probably will not be during the present winter. I shall do every thing in my power to bring them to a satisfactory conclusion.

I am, sir, with great respect and esteem,

Your very obedient servant,

JAMES MONROE.

P. S. I inclose you a copy of my letter to general Armstrong; by Mr. Erving.

Remonstrance by the minister plenipotentiary of the United States, to the British government.

GREAT CUMBERLAND PLACE, NO. 12,

September 23, 1805.

MY LORD,

I flattered myself, from what passed in our last interview, that I should have been honored, before this, with an answer from your lordship to my letters, respecting the late seizure of American vessels. I understood it to be agreed, that the discus-

sion which then took place should be considered as inofficial, as explanatory only of the ideas which we might respectively entertain on the subject, and that your lordship would afterwards give me such a reply to my letters, respecting that measure, as his majesty's government might desire to have communicated to the government of the United States. In consequence, I have since waited with anxiety such a communication, in the daily expectation of receiving it. It is far from being my desire to give your lordship any trouble in this business which I can avoid, as the time which has since elapsed sufficiently shews. But the great importance of the subject, which has indeed become more so, by the continuance of the same policy, and the frequency of seizures which are still made of American vessels, place me in a situation of peculiar responsibility. My government will expect of me correct information on this point, in all its views, and I am very desirous of complying with its just expectations. I must, therefore, again request that your lordship will be so good as to enable me to make such a representation to my government, of that measure, as his majesty's government may think proper to give.

I am sorry to add, that the longer I have reflected on the subject, the more confirmed I have been in the objections to the measure. If we examine it in reference to the law of nations, it appears to me to be repugnant to every principle of that law; if, by the understanding, or as it may be more properly called, the agreement of our governments, respecting the commerce in question, I consider it equally repugnant to the principles of that agreement. In both these views your lordship will permit me to make some additional remarks on the subject.

By the law of nations, as settled by the most approved writers, no other restraint is acknowledged on the trade of neutral nations, with those at war, than that it be impartial between the latter; that it shall

not extend to articles which are deemed contraband of war ; nor to the transportation of persons in military service ; nor to places actually blockaded or besieged. Every other commerce of a neutral with a belligerent, is considered a lawful commerce ; and every other restraint on it to either of the belligerents by the other, an unlawful restraint.

The list of contraband is well defined, as are also the circumstances which constitute a blockade. The best authorities have united in confining the first to such articles as are used in war, and are applicable to military purposes ; and requiring, to constitute the latter, the disposition of such a force, consisting of stationary ships, so near the port, by the power which attacks it, as to make it dangerous for the vessel of a neutral power to enter it. The late treaty between Great Britain and Russia designates these circumstances as necessary to constitute a blockade, and it is believed that it was never viewed before in a light more favorable to the invading power.

The vessels condemned were engaged in a commerce between the United States and some port in Europe, or between those states and the West India islands, belonging to an enemy of Great Britain. In the European voyage the cargo consisted of the productions of the colonies ; in the voyage to the West Indies it consisted of the goods of the power to which the colony belonged, and to which the ship was destined. The ship and cargo in every case were the property of American citizens, and the cargo had been landed, and the duty on it paid, in the United States. It was decided that these voyages were continuous, and the vessels and cargoes were condemned on the principle that the commerce was illegal. I beg to refer more especially in this statement to the case of the *Essex*, an appeal from the judgment of the vice admiralty court at New Providence, in which the lords commissioners of appeals, in confirming that judgment, established this doctrine.

It requires but a slight view of the subject to be satisfied that these condemnations are incompatible with the law of nations as above stated. None of the cases have involved a question of contraband, of blockade, or of any other kind that was ever contested till of late, in favor of a belligerent against a neutral power. It is not on any principle that it is applicable to any such case, that the measure can be defended. On what principle then is it supported by Great Britain? What is the nature and extent of her doctrine? What are the circumstances which recommend the arguments which support it? The information on these points we cannot refer to the well known writers on the law of nations; no illustration can be obtained from them of a doctrine which they never heard of. We must look for it to an authority more modern; to one which, however respectable for the learning and professional abilities of the judge who presides, is, nevertheless, one which, from many considerations, is not obligatory on other powers. In a report of the decisions of the court of admiralty of this kingdom, we find a notice of a series of orders issued by the government, of different dates and imports, which have regulated this business. The first of these bears date on the 6th of November, 1793; the second on the 8th of January, 1794; the third on the 25th January, 1798. Other orders have been issued since the commencement of the present war. It is these orders which have authorized the seizures that were made, at different times, in the course of the last war, and were lately made by British cruizers of the vessels of the United States. They too form the law which has governed the courts in the decisions on the several cases which have arisen under those seizures. The first of these orders prohibits altogether every species of commerce between neutral countries and enemies colonies, and between neutral and other countries, in the productions of those colonies; the second and subsequent orders modify it in various

forms. The doctrine, however, in every decision, is the same; it is contended in each, that the character and just extent of the principle is to be found in the first order, and that every departure from it since, has been a relaxation of the principle, not claimed of right by neutral powers, but conceded in their favor gratuitously by Great Britain.

In support of these orders it is urged, that as the colonial trade is a system of monopoly to the parent country in time of peace, neutral powers have no right to participate in it in time of war, although they be permitted so to do by the parent country: that a belligerent has a right to interdict them from such a commerce. It is on this system of internal restraint, this regulation of colonial trade, by the powers having colonies, that a new principle of the law of nations is attempted to be founded: one which seeks to discriminate in respect to the commerce of neutral powers, with a belligerent, between different parts of the territory of the same power, and likewise subverts many other principles of great importance, which have heretofore been held sacred among nations. It is believed that so important a superstructure was never raised on so slight a foundation. Permit me to ask, does it follow, because the parent country monopolizes in peace the whole commerce of its colonies, that in war it should have no right to regulate it at all? That on the contrary it should be construed to transfer, in equal extent, a right to its enemy, to the prejudice of the parent country, of the colonies, and of neutral powers? If this doctrine was sound, it would certainly institute a new and singular mode of acquiring and losing rights; one which would be highly advantageous to one party, while it was equally injurious to the other. To the colonies, more especially, it would prove peculiarly onerous and oppressive. It is known that they are essentially dependent for their existence on supplies from other countries, especially the United States of America, who being in their

neighbourhood, have the means of furnishing them with greatest certainty, and on the best terms. Is it not sufficient that they be subjected to that restraint in peace, when the evils attending it, by the occasional interference of the parent country, may be, and are frequently repaired? Is it consistent with justice or humanity, that it should be converted into a principle, in favor of an enemy, inexorable of course, but otherwise without the means of listening to their complaints, not for their distress or oppression only, but for their extermination? But there are other insuperable objections to this doctrine. Are not the colonies of every country a part of its domain, and do they not continue to be so until they are severed from it by conquest? Is not the power to regulate commerce incident to the sovereignty, and is it not co-extensive over the whole territory which any government possesses? Can one belligerent acquire any right to the territory of another, but by conquest? And can any rights which appertain thereto, be otherwise defeated or curtailed in war? In whatever light, therefore, the subject is viewed, it appears to me evident that this doctrine cannot be supported. No distinction, founded in reason, can be taken between the different parts of the territory of the same power to justify it. The separation of one portion from another by the sea, gives lawfully to the belligerent which is superior on that element, a vast ascendancy in all the concerns on which the success of the war, or the relative prosperity of their respective dominions, may in any degree depend. It opens to such power ample means for its own aggrandizement, and for the harassment and distress of its adversary. With these it should be satisfied. But neither can that circumstance, nor can any of internal arrangement, which any power may adopt for the government of its dominions, be construed to give to its enemy any other advantage over it. They certainly do not justify the doctrine in question, which asserts, that the law of

nations varies in its application to different portions of the territory of the same power: that it operates in one mode, in respect to one, and in another, or even not at all, in respect to another; that the rights, of humanity, of neutral powers, and all other rights, are to sink before it.

It is further urged that neutral powers ought not to complain of this restraint, because they stand under it, on the same ground, with respect to that commerce, which they held in time of peace. But this fact, if true, gives no support to the pretension. The claim involves a question of right, not of interest. If the neutral powers have a right in war to such commerce, with the colonies of the enemies of Great Britain, as the parent states respectively allowed, they ought not to be deprived of it by her, nor can its just claims be satisfied by any compromise of the kind alluded to. For this argument to have the weight which it is intended to give it, the commerce of the neutral powers with those colonies, should be placed and preserved through the war, in the same state, as if it had not occurred. Great Britain should in respect to them take the place of the parent country, and do every thing which the latter would have done, had there been no war. To discharge that duty, it would be necessary for her to establish such a police over the colony, as to be able to examine the circumstances attending it annually, to ascertain whether the crops were abundant, supplies from other quarters had failed, and eventually to decide whether under such circumstances the parent country would have opened the ports to neutral powers. But these offices cannot be performed by any power which is not in possession of the colony; that can only be obtained by conquest, in which case the victor would of course have a right to regulate its trade as it thought fit.

It is also said, that neutral powers have no right to profit of the advantages which are gained in war, by the arms of Great Britain. This argument has even

less weight than the others. It does not, in truth, apply at all to the question. Neutral powers do not claim a right, as already observed, to any commerce with the colonies which Great Britain may have conquered of her enemies, otherwise than on the conditions which she imposes. The point in question turns on the commerce which they are entitled to, with the colonies which she has not conquered, but still remain subject to the dominion of the parent country. With such it is contended, for reasons that have been already given, that neutral powers have a right to enjoy all the advantages in trade which the parent country allows them: a right of which the mere circumstance of war cannot deprive them. If Great Britain had a right to prohibit that commerce, it existed before the war began, and of course before she had gained any advantage over her enemies. If it did not then exist, it certainly does not at the present time. Rights of the kind in question, cannot depend on the fortune of war, or other contingencies. The law which regulates them is invariable, until it be changed by the competent authority. It forms a rule equally between belligerent powers, and between neutral and belligerent, which is dictated by reason and sanctioned by the usage and consent of nations.

The foregoing considerations have, it is presumed, proved, that the claim of Great Britain to prohibit the commerce of neutral powers in the manner proposed, is repugnant to the law of nations. If, however, any doubt remain on that point, other considerations which may be urged, cannot fail to remove it. The number of orders of different imports which have been issued by government, to regulate the seizure of neutral vessels, is a proof that there is no established law for the purpose. And the strictness with which the courts have followed those orders through their various modifications, is equally a proof that there is no other authority for the government of their decisions. If the order of the 6th of No-

vember, 1793, contained the true doctrine of the law of nations, there would have been no occasion for those which followed, nor is it probable that they would have been issued ; indeed, if that order had been in conformity with that law, there would have been no occasion for it. As in the cases of blockade and contraband, the law would have been well known without an order, especially one so very descriptive ; the interest of the cruizers, which is always sufficiently active, would have prompted them to make the seizures, and the opinions of eminent writers, which in that case would not have been wanting, would have furnished the courts the best authority for their decisions.

I shall now proceed to shew that the decisions complained of are contrary to the understanding, or what, perhaps, may more properly be called an agreement of the two governments, on the subject. By the order of the sixth November, 1793, some hundreds of American vessels were seized, carried into port and condemned. Those seizures and condemnations became the subject of an immediate negotiation between the two nations, which terminated in a treaty, by which it was agreed to submit the whole subject to commissioners, who should be invested with full power to settle the controversy which had thus arisen. That stipulation was carried into complete effect ; commissioners were appointed, who examined laboriously and fully, all the cases of seizure and condemnation which had taken place, and finally decided on the same, in which decisions they condemned the principle of the order, and awarded compensation to those who had suffered under it. Those awards have been since fairly and honorably discharged by Great Britain. It merits particular attention, that a part of the twelfth article of that treaty referred expressly to the point in question, and that it was, on the solemn deliberation of each government by their mutual consent, expunged from it. It seems

therefore, to be impossible to consider that transaction, under all the circumstances attending it, in any other light than as a fair and amicable adjustment of the question between the parties ; one which authorized the just expectation that it would never have become again a cause of complaint between them. The sense of both was expressed on it in a manner too marked and explicit, to admit of a different conclusion. The subject too was of a nature that when once settled ought to be considered as settled forever. It is not like questions of commerce between two powers, which affect their internal concerns, and depend, of course, on the internal regulations of each. When these latter are arranged by treaty, the rights which accrue to each party under it, in the interior of the other, cease when the treaty expires. Each has a right afterwards to decide for itself in what manner that concern shall be regulated in future, and in that decision to consult solely its interest. But the present topic is of a very different character. It involves no question of commerce or other internal concern between the two nations. It respects the commerce only, which either may have with the enemies of the other, in time of war. It involves, therefore, only a question of right, under the law of nations, which in its nature cannot fluctuate. It is proper to add, that the conclusion abovementioned was further supported by the important fact, that until the late decree, in the case of the *Essex*, not one American vessel engaged in this commerce had been condemned on this doctrine ; that several which were met in the channel by the British cruizers, were permitted, after an examination of their papers, to pursue their voyage. This circumstance justified the opinion, that that commerce was deemed a lawful one by Great Britain.

There is another ground, on which the late seizures and condemnations are considered as highly objectionable, and to furnish just cause of com-

plaint to the United States. Until the final report of the commissioners under the 7th article of the treaty of 1794, which was not made until last year, it is admitted that their abitrament was not obligatory on the parties, in the sense in which it is now contended to be. Every intermediate declaration, however, by Great Britain, of her sense on the subject, must be considered as binding on her, as it laid the foundation of commercial enterprizes, which were thought to be secure while within that limit. Your lordship will permit me to refer you to several examples of this kind, which were equally formal and official, in which the sense of his majesty's government was declared very differently from what it has been in the late condemnations. In Robinson's reports, vol. 2, page 368, (case the Polly, Lasky, master,) it seems to have been clearly established by the learned judge of the court of admiralty, that an American has a right to import the produce of an enemy's colony into the United States, and to send it on afterwards to the general commerce of Europe; and that the landing the goods, and paying the duties in the United States, should preclude all farther question relative to the voyage. The terms "for his own use," which are to be found in the report, are obviously intended to assert the claim only that the property shall be American, and not that of an enemy; but admitting the right to send on the produce afterwards to the general commerce of Europe, it is not possible that those terms should convey any other idea. A *bona fide* importation is also held by the judge to be satisfied by the landing the goods and paying the duties. This therefore is, I think, the true import of that decision. The doctrine is again laid down in still more explicit terms by the government itself, in a correspondence between lord Hawkesbury and my predecessor, Mr. King. The case was precisely similar to those which have been lately before the court. Mr. King complained in a letter of March 18, 1801, that the cargo

of an American vessel going from the United States to a Spanish colony, had been condemned by the vice-admiralty court of Nassau, on the ground that it was of the growth of Spain, which decision he contended was contrary to the law of nations, and requested that suitable instructions might be dispatched to the proper officers in the West Indies to prevent like abuses in future. Lord Hawkesbury in a reply of April 11th, communicated the report of the king's advocate general, in which it is expressly stated that the produce of an enemy may be imported by a neutral into his own country, and re-exported thence to the mother country; and in like manner in that circuitous mode, that the produce and manufactures of the mother country might find their way to its colonies; that the landing the goods and paying the duties in the neutral country, broke the continuity of the voyage, and legalized the trade, although the goods were re-shipped in the same vessel, on account of the same neutral proprietors, and forwarded for sale to the mother country of the colony. It merits attention in this report (so clearly and positively is the doctrine laid down, that the landing the goods and paying the duties in the neutral country broke the continuity of the voyage) that it is stated as a doubtful point, whether the mere touching in the neutral country to obtain fresh clearances will be considered in the light of the direct trade; that no positive inhibition is insisted on any but the direct trade between the mother country and the colonies. This doctrine in the light herein stated, is also to be found in the treaty between Great Britain and Russia, June 17, 1801. By the 2d section of the 3d article, the commerce of neutrals in the productions or manufactures of the enemies of Great Britain, which have become the property of the neutral, is declared to be free; that section was afterwards explained by a declaratory article of October 20, of the same year, by which it is agreed that it shall not be understood to authorize neutrals to carry the

produce or merchandise of an enemy either directly from the colonies to the parent country, or from the parent country to the colonies. In other respects the commerce was left on the footing on which it was placed by that section, perfectly free, except in the direct trade between the colony and the parent country. It is worthy of remark that, as by the reference made in the explanatory article of the treaty with Russia, to the United States of America, it was supposed that those states, and Russia, Denmark and Sweden, had a common interest in neutral questions, so it was obviously intended, from the similarity of sentiment which is observable between that treaty as amended, and the report of the advocate-general abovementioned, to place all the parties on the same footing. After these acts of the British government, which being official were made public, it was not to be expected that any greater restraint would have been contemplated by it, on that commerce, than they impose, that an inquiry would ever have been made, not whether the property with which an American vessel was charged belonged to a citizen of the United States, or an enemy, but whether it belonged to this or that American; an inquiry which imposes a condition which it is believed that no independent nation, having a just sense of what it owes to its rights or its honor, can ever comply with. Much less was it to be expected that such a restraint would have been thought of after the report of the commissioners above adverted to, which seemed to have placed the rights of the United States incontestibly on a much more liberal, and, as is contended, just footing.

It is proper to add that the decree of the lords commissioners of appeals in the case of the *Essex* produced the same effect as an order from the government would have done. Prior to that decree, from the commencement of the war, the commerce in question was pursued by the citizens of the United States as has been already observed, without molestation.

It is presumable that till then his majesty's cruizers were induced to forbear a seizure, by the same considerations which induced the American citizens to engage in the commerce, a belief that it was a lawful one. The facts abovementioned were equally before the parties, and it is not surprizing that they should have drawn the same conclusion from them. That decree, however, opened a new scene. It certainly gave a signal to the cruizers to commence the seizures, which they have not failed to do, as has been sufficiently felt by the citizens of the United States, who have suffered under it. According to the information which has been given me, about fifty vessels have been brought into the ports of Great Britain, in consequence of it, and there is reason to believe that the same system is pursued in the West Indies, and elsewhere. The measure is the more to be complained of, because Great Britain had, in permitting the commerce for two years, given a sanction to it by her conduct, and nothing had occurred to create a suspicion that her sentiments varied from her conduct. Had that been the case, or had she been disposed to change her conduct in that respect towards the United States, it might reasonably have been expected that some intimation would have been given of it before the measure was carried into effect. Between powers who are equally desirous of preserving the relations of friendship with each other, notice might in all such cases be expected. But in the present case the obligation to give it seemed to be peculiarly strong. The existence of a negotiation which had been sought on the part of the United States, some considerable time before my departure for Spain, for the express purpose of adjusting amicably and fairly, all such questions between the two nations, and postponed on that occasion to accommodate the views of his majesty's government, furnished a suitable opportunity for such an intimation, while it could not otherwise than increase the claim to it.

In this communication I have made no comment on the difference which is observable in the import of the several orders which have regulated, at different times, the seizure of neutral vessels, some of which were more moderate than others. It is proper, however, to remark here, that those which were issued, or even that any had been issued since the commencement of the present war, were circumstances not known till very lately: on principle, it is acknowledged, that they are to be viewed in the same light, and it has been my object to examine them by that standard, without going into detail, or marking the shades of difference between them. I have made the examination with that freedom and candor which belong to a subject of very high importance to the United States; the result of which has been, as I presume, to prove that all the orders are repugnant to the law of nations, and that the late condemnations which have revived the pretension on the part of Great Britain, are not only repugnant to that law, but to the understanding which it was supposed had taken place between the two powers, respecting the commerce in question.

I cannot conclude this note without adverting to the other topics depending between our governments which it is also much wished to adjust at this time. These are well known to your lordship, and it is therefore unnecessary to add any thing on them at present. With a view to perpetuate the friendship of the two nations, no unnecessary cause of collision should be left open. Those adverted to, are believed to be of this kind, such is the case of boundary, the impressment of seamen, &c. since it is presumed there can be no real conflicting interest between them, on those points. The general commercial relation may then be adjusted or postponed as may be most consistent with the views of his majesty's government. On that point also it is believed that it will not be difficult to make such an arrangement as, by

giving sufficient scope to the resources, to the industry and the enterprize of the people of both countries, may prove highly and reciprocally advantageous to them. In the topic of impressment, however, the motive is more urgent. In that line the rights of the United States have been so long trampled under foot, and the feelings of humanity, in respect to the sufferers, and the honor of their government, even in their own ports, so often outraged, that the astonished world may begin to doubt, whether the patience with which these injuries have been borne, ought to be attributed to generous or unworthy motives: whether the United States merit the rank to which in other respects they are justly entitled among independent powers, or have already, in the very morn of their political career, lost their energy and become degenerate. The United States are not insensible that their conduct has exposed them to such suspicions, though they well know that they have not merited them. They are aware from the similarity in the person, the manners, and above all, the identity of the language, which is common to the people of both nations, that the subject is a difficult one; they are equally aware, that to Great Britain also, it is a delicate one; and they have been willing, in seeking an arrangement of this important interest, to give a proof by the mode, of their very sincere desire to cherish the relations of friendship with her. I have only to add, that I shall be happy to meet your lordship on these points, as soon as you can make it convenient to you.

I have the honor to be,

With high consideration,

Your lordship's most obedient servant.

(Signed)

JAMES MONROE.

No. 37.

LONDON, NOV. 26, 1805.

SIR,

I hasten to transmit to you a copy of a letter which I received yesterday from lord Mulgrave in reply to mine of August 12th, and September 23d. From the length of time which had elapsed, and other circumstances, I had almost concluded that his government had resolved not to enter on the subject, but to leave me to get its determination as I could, from the decision of the admiralty. I find, however, with much satisfaction, that it is intended to take it up, whence there is some cause to presume that the business may yet be placed on a satisfactory footing. I shall not fail to cherish a disposition to such an adjustment, by all the means in my power, or to inform you, without delay, of whatever may occur in it.

I am, sir, with great respect and esteem,

Your very obedient servant,

JAMES MONROE.

[COPY.]

DOWNING STREET, NOV. 25, 1805.

SIR,

Upon a deliberate consideration of the nature and importance of the question which you have opened in the two official notes which I had the honor to receive from you, and adverting to the grounds of reasoning, upon which you have principally rested your representations, I deemed it indispensably necessary to a due discussion of the subject, that a reference should be made by me to those who are best acquainted with all the circumstances respecting the decisions which have taken place, and the rules which have been established in our courts of admiralty and appeal, as well as with the principles and practice, according to which the law is therein administered. I

have not yet received any report, in consequence of the reference which I have made, but I hope at no distant period to be enabled to give a full, and I trust, conclusive answer upon this most important point. I trust that you will not consider the interval of time which is necessary for a due investigation of so considerable a question, as a delay either inexpedient or misplaced.

I have the honor to be,

With great consideration,

Sir,

Your most obedient humble servant,

(Signed)

MULGRAVE.

JAMES MONROE. esq. &c. &c. &c.

*Extract of a letter from Mr. Monroe to Mr. Madison,
dated, London, February 12, 1806.*

“As soon as Mr. Fox took possession of his office, he requested an interview with the foreign ministers, which took place yesterday. We were introduced separately. Mine lasted about half an hour. As soon as the ceremony of the interview had passed, I observed that I presumed he had been too short a term in office to have made himself acquainted with what occurred between his predecessors and myself, more especially the last one. He said he had not had time to read the papers, though he presumed he had a general idea on some of the topics. In respect to the immediate question of seizure, he asked me whether I had made to them, or they to me, any proposition? I gave a short sketch of the part which our respective governments had acted, since the commencement of the present war, towards each other. I told him my government had been ready to form a commercial treaty with his, on the expiration of the

late one ; that it had agreed to postpone it to accommodate his, and with a desire that the arrangements which might be formed, being entered into at a time when each had sufficient leisure to attend to the object, and founded on a liberal view of their respective interests, might place their relations on such a footing as to secure their friendship from interruption, at least at an early day ; that in the same spirit it had sought to put out of the way certain causes of a transient nature which might possibly create misunderstanding in the course of the war, such as the impressment of our seamen, blockades by proclamation, &c. according to a project which had been presented to lord Hawkesbury, and to both his successors ; that those gentlemen never gave any definitive answer to that project, and urged as a cause of their delay, the other and pressing engagements of their government with which I was well acquainted, as also, that its conduct towards the United States in the course of the present war, was as consonant to their principles and wishes in the most important points as they could desire it to be : that I left the business on that ground when I went to Spain, in the expectation that no change in the existing relations between the two countries would be made in my absence.

I assured him that I was astonished to find on my return, that on the contrary those relations had experienced the most essential change ; that an attack had been made on our commerce, on a principle which had heretofore been so completely settled between our governments, and abandoned by his, as to have been a case for which no provision was even proposed in the project referred to. I explained to him the ground of this remark, and informed him that I had written several notes to lord Mulgrave on the subject, to which I had not been able to obtain an answer on the main question, though he seemed desirous by keeping it open, in his short replies, that I should not consider it as decided against the United States.

I could not avoid intimating to him that the friendly disposition which our government had shewn, had been most ungenerously requited by his : that it seemed as if it had pursued a just and friendly conduct towards the United States, till the moment that the new coalition was formed, and gave the present blow, when the prospect was favorable to success, and kept the business in suspense to see the result of affairs on the continent and in the United States. He heard me with much attention and apparent interest, intimated that he had been accused of being too friendly to America, and when I spoke of the treaty with Russia, he observed that he had thought that the arrangement made by it was a good one, though I did not understand him as pledging himself by the remark to its conditions. I requested that he would make himself master, as soon as in his power, of the correspondence between lord Mulgrave and myself, and give me an interview, which he promised. I am happy to add, on a view of all circumstances, that I think the prospect of arranging our affairs with this government, especially that one which respects the trade with the colonies of its enemies, on satisfactory terms, a very favorable one. It is certain that nothing more favorable to such a result was, or could reasonably have been expected from the first interview with the present minister."

I am, sir,

With great respect, &c.

(Signed)

JAMES MONROE.

No. 42.

LONDON, FEB. 28, 1806.

SIR,

Presuming that it may be satisfactory to the president, and useful, to be made acquainted, without delay, with every incident that occurs, I have the plea-

sure to send you a copy of a late note to Mr. Fox, on our concerns in his hands. In our first interview he promised to examine the papers, and give me another at an early day, but as I did not hear from him within the time I had expected, I called again, when he informed me that he had not yet been able to take up the American papers, but should soon do it. He asked in what shape the most interesting topic presented itself, alluding as I understood, to the late seizures. I replied by a complaint on the part of the United States, of a violation by Great Britain of the relations subsisting between the countries, and I illustrated the remark by a sketch of the conduct of his government in the most material circumstances. To the merits of the case he said but little. What he did say, however, was conciliating, and he repeated what he had said in the former interview of his earnest desire to see the affairs of the two countries placed on the most friendly footing. He assured me that I should hear from him as soon as he had read the papers, which he would do without delay. I intimated that, by giving him a summary of the whole, I might perhaps facilitate his research, to which he assented. It was on that ground that I addressed him the inclosed note.

I have since received your letter of January 13, in which you promise to send me an examination of the British principle lately published, the memorials of the merchants of our principal towns, and other documents illustrative of the subject. I shall be happy to receive these, and shall certainly endeavor to draw from them all the aid which they can furnish. The letter referred to in the commencement of that of the 13th has not come to hand, nor has any of a later date than December 4. I shall be attentive to the injunction contained in the last paragraph of that of the 13th.

As the subject is now fairly before the new ministry, who seem to be well disposed in the business, permit me to submit it to consideration whether it

may not be better that no measure should be definitively adopted, or if already adopted, be executed, till a fair experiment is made of what may be expected of it. By suspending what might have been contemplated in another view, and even necessary, it may tend to conciliate those now in power, and be productive of good.

I have the honor to be,

With great respect and consideration,

Your obedient servant,

JAMES MONROE.

PRINCE'S STREET, FEB. 25, 1806.

SIR,

I have the honor to transmit you a note of the papers which are material in my correspondence with your predecessors on certain interesting topics, which have been for some time depending between our governments, and are still unsettled. These are, 1st, the rights of neutral powers in certain specified cases; 2d, the impressment of American, and desertion of British seamen; and 3d, the boundary between the United States and the British possessions in America. The papers referred to will, I presume, sufficiently illustrate these topics. I shall, however, be permitted to accompany them with some remarks, to explain the course which the business has taken and the state in which you receive it.

Aware of the abuses which had been practised in respect to neutral rights and seamen, in the last war, and of their injurious effect on the interest of both countries, my government was very desirous to prevent a repetition of them in the present one. With that view, and by its order, I had the honor to propose to lord Hawkesbury, soon after the commencement of the war, an arrangement, by convention, of these

interests, on such just and fair conditions, as it was presumed would have been readily acceded to. You will see by the project which I then presented to his lordship, at his request, that the object was strictly to prevent abuses, and the ill consequences incident to them, not to acquire any advantage to the United States, by the establishment of controverted principles in the one, or unreasonable pretensions in the other case. In respect to neutral rights, it was proposed to adopt between the governments, in such cases as were most liable to abuse, certain principles or rules of conduct which Great Britain had already assented to in her treaty with Russia, in 1801. As those powers had entered into that treaty for the express purpose of defining the law of nations in the cases to which it applied, and Great Britain had adopted its conditions afterwards in separate conventions with Denmark and Sweden; with the same view it was concluded that her government would not hesitate to admit its doctrine or to observe its injunctions with other powers. The same motive was felt and respected in the proposition which I had the honor to make in respect to seamen. The sensibility of the government, and indeed of the whole nation, had been subjected to great and almost continual excitement by the abuses which had been committed in that line, on the high seas, in the islands, and sometimes in the ports of the United States. The sons of respectable citizens had been snatched from them, many of whom were doomed never to return, to be slain in wars to which their country was not a party, or otherwise perish in a foreign service. No rule had been established by the governments to discriminate between American and British seamen, a thing not easily done by the most impartial; and the commanders of many of his majesty's ships of war and privateers, especially the latter, acknowledge none but their own judgments in making the discrimination. The highest American documents were often either not looked at, or utterly

disregarded. It was evidently improper that an interest of a nature so delicate and important; one which was so intimately connected with the sovereignty and independence of the nation, should be left longer in such a state of oppression. My government felt that it would be wanting to what it owed to its character as in its duty, if it did not endeavor to put an end to a practice so injurious and at the same time so degrading. It was, therefore, one of the objects of the project referred to, to provide a remedy for that evil. But it was understood that Great Britain complained likewise of an injury in respect to her seamen, though of a different kind: for that, also, it was proposed to provide an adequate remedy. In protecting American citizens from impressment, my government was far from desiring to extend its protection to any who had not a just claim to it. It was ready to meet the injury complained of by Great Britain, and to suppress it by the most effectual means in its power. These propositions were neither accepted nor rejected by lord Hawkesbury, though I think myself perfectly correct in stating that nothing occurred in our conferences, to justify an inference that he thought them unreasonable. They were postponed from time to time at his instance, and finally transferred to lord Harrowby, his successor. I revived the subject immediately with lord Harrowby, to whom I also submitted, at the same time, a proposition relative to boundaries. It happened that lord Hawkesbury and Mr. King had made a convention on this latter subject, within a few days of the time when one was also concluded between the United States and France, whereby the province of Louisiana was ceded to those states. As it was not known either to lord Hawkesbury or Mr. King, when they formed their treaty, that one had been concluded with France, it was impossible that the conditions of the French treaty should be in any degree affected by that with Great Britain. It was, however, apprehended, that if the

British treaty should be ratified by the president and senate, after the conditions of the other were known, without providing against it; that it might lay the foundation for such a pretension. It was, therefore, proposed to modify the convention in such a manner as to preclude a claim which would be equally unjust and unauthorized. As this subject is fully explained in my note to lord Harrowby, of the 5th of September, 1804, it is unnecessary to enter further into it at present. The conduct of lord Harrowby in this business was essentially the same with that of his predecessor. It was postponed from time to time for the consideration of the cabinet, whose decision I was taught to expect, but never received. I had been ordered by my government, before lord Harrowby came into office, to repair to Spain on a special mission, as soon as the business with his lordship should be concluded. Of that fact, after waiting some time, I gave his lordship information, in the hope of promoting dispatch. Still, however, the business was delayed; the cabinet, as I was informed, having come to no decision on any point, till finally it was agreed between us to postpone the whole until my return from Spain, when it should be resumed and concluded. I left Great Britain on that mission in October, 1804, and returned in July, 1805.

At the epoch referred to, the relations between the two countries were of a character the most friendly. Not an American vessel had been condemned on any principle which was relied on by my government, and only one that I knew of on any principle whatever. Their commerce with each other was as it always will be, when left to its natural course, most flourishing, and that which the United States claimed as a neutral power with other nations, on a footing which was perfectly satisfactory to their government. At my return, however, the scene was completely changed. A system of seizure and condemnation of American vessels had been commenced, on a princi-

ple, respecting which it was presumed that no new discussion could ever arise ; one which was considered as having been so completely settled between the governments, that in the project above referred to, it was not contemplated to make a provision for it : a principle which had been renounced by Great Britain in her treaty with the United States in 1794 : which had been condemned by the commissioners who sat under that treaty ; which had been renounced by the court of admiralty in a subsequent decision ; by lord Hawkesbury in a formal communication with my predecessor in 1801 ; by the treaty with Russia in the same year ; and what is perhaps still more conclusive, by the government, in the sanction which had been given to that commerce for the two preceding years of the war. I could not otherwise than be much surprised at a proceeding, which I considered objectionable in so many views, and hastened to remonstrate against it to lord Mulgrave, in several notes, whose dates are annexed. To these his lordship never honored me with a conclusive answer, with one which acknowledged the measure as an act of the government, or disclaimed it on its part. The proceeding has been highly injurious to the United States. About 120 of their vessels have been seized, several of which were condemned, all taken from their course, detained and otherwise subjected to heavy losses and damages. To the immediate sufferers it has been very disastrous ; but the ill effect has not been confined to them only. It has been severely felt in the general commerce of the country.

I have thought it my duty to give you above a sketch of the several topics depending between our governments, which are submitted to your consideration. They are all of a nature very interesting, as I am persuaded you will find by a perusal of the documents referred to. But the late seizure and condemnation of American vessels are acts which have proved so highly injurious to the United States, and have so es-

essentially changed the relations between the countries, that they will, I flatter myself, obtain from you a more immediate and particular attention. I beg you to be assured that I shall be happy to have it in my power to transmit to my government, without delay, such communications on your part, which may serve not only to heal the wound which has been thus unexpectedly received, but to promote in other respects, by suitable arrangements, the reciprocal and permanent interests of both nations, and the best understanding between their governments.

I beg you to accept the assurance of the high consideration with which I have the honor to be, sir,

Your most obedient,

And most humble servant,

(Signed)

JAMES MONROE.

The right hon. Charles J. Fox, &c. &c. &c.

No. 43.

LONDON, MARCH 31, 1806.

SIR,

Your letter of the 13th January, is the last that I have received. The pamphlet inclosed with it has been republished here, and I have this day transmitted a copy of it to Mr. Fox, with whom I had an interview on the 28th. I had expected from what passed between us on the 11th, that before this, much progress would have been made in the adjustment of our affair: I am, however, sorry to add that this has not been the case. In the late interview, I complained of the delay which had taken place, more especially as the court continued to condemn our vessels on the principle it had heretofore done. Mr. Fox said that till the business was arranged, he presumed the court would be consistent; but gave reason to expect that the condemnations would be suspended. He assured me explicitly, that the late decision was

not to be considered as an evidence of the disposition of the present ministry. I endeavored to fix with him the conditions of our adjustment of that question, but found that he was not prepared to conclude any thing. The tenor of his conversation, however, was perfectly consistent with what he had said before on it, as heretofore communicated to you. The interview terminated in his assuring me that he should devote the Easter holidays to a full examination of the whole subject, after which he would be prepared to meet me on it, and that he was persuaded we might conclude it in a month or six weeks from that time: that he would certainly give it all the dispatch in his power. He intimated that if indeed a peace should take place, of which there was at present but little prospect, he was nevertheless desirous of settling this business amicably with the United States, with a view to preserve future harmony. I told him that we expected payment for the spoliations. He said that that was a very serious and difficult point; but gave no opinion on it. Finding that nothing could be done conclusively, I had only to assure him that I should be ready to meet him whenever he might be prepared, which I hoped would be immediately after the holidays. From what I can discern, I think that there is much cause to believe that Mr. Fox has the best disposition to settle our differences on just principles, but it must be recollected that some other of the members of the cabinet have not always thought with him on such topics. On the most deliberate reflection, I am convinced that too much reliance ought not to be placed on these favorable appearances, and that there is cause to fear that if the congress should separate without adopting a system of coercive policy calculated to meet the most unfavorable result, their forbearance may contribute to the disappointment of our reasonable expectations. By this, however, I do not wish to imply that measures of the kind alluded to should be carried into prompt execution.

I mean only that the attitude should be taken, but its operation be suspended by suitable powers to the president, till he shall be duly notified that the negotiation has failed. Such a suspension will be deemed a sufficient mark of respect to those in the ministry who are disposed to a fair accommodation, and the attitude will, in my opinion, tend to aid their councils in producing that effect.

I am, sir,

With great respect and esteem,

Your very obedient servant,

JAMES MONROE.



*Extract of a letter from Mr. Monroe to Mr. Madison,
dated, London, April 3, 1806.*

“ As it appeared by what occurred in my interview with Mr. Fox, on the 28th ultimo, that some weeks at least would elapse before I could hope to bring our business to any conclusion, I thought it proper to make a formal application to him on the 31st, for an order to suspend the seizure and condemnation of our vessels on the principle of the late decrees. I had not requested this in explicit terms before, because I hoped from what passed in our first interview that the whole affair would have been concluded much sooner. I was fearful too that if the demand should be granted, it would become a reason why nothing more should be done. This latter reason it is true still remains in some degree in force, if indeed it had any weight at first. It was, however, outweighed by the consideration that the seizures were continued, and that I ought not, on a mere speculative point of expedience, as to the effect which such an application might have on the general question, to delay any longer my utmost exertion to put an end to the practice.

There were also some other considerations which prevented my making the application sooner, which had ceased, if they did not furnish motives for making it in the present stage. The new ministry had a just claim to sufficient time to become acquainted with the merits of the question, and even to sound the parliament on it, before it could be expected to take any step in the business. Had I made the demand at an earlier period I thought I should incur the imputation of a want of candour, without a reasonable prospect of hastening a decision, unless indeed by urging it unseasonably, I might promote an improper one. To Mr. Fox especially much attention was due in the mode of proceeding, on account of his character and principles in reference to our country, which are known to be just and liberal. It seemed probable that by respecting that sentiment towards him in the measures taken, his feelings would be gratified and his mind conciliated, which could not otherwise than produce a good effect. His exertions on topics in which the United States were interested, form an important trait in his political life ; and it was evident in our first and subsequent interviews that he looked back on them with interest and satisfaction. This, therefore, formed a special motive for giving time and acting with delicacy in the business. At this period, however, the application seemed to be free from all these objections, while it had become obviously my duty to make it by the considerations stated in my note.

How the cabinet is disposed in this question it is not in my power to state. Some of its members are known to have differed with Mr. Fox in respect to the policy of Great Britain towards the United States, on former occasions and in similar cases. It is possible that the spirit of conciliation on which the ministry is formed may be felt in the present one. Every view, however, which I have been able to take of the subject, confirms me in the justice of the remarks

which were communicated to you in my last of the 31st ultimo."

I am, sir,

With great respect, &c.

(Signed)

JAMES MONROE.

MARCH 31, 1806.

Mr. Monroe presents his compliments to Mr. Fox, and has the honor to send him a copy of an American essay, containing an examination of the principle on which the admiralty has lately condemned the vessels of the United States. As this work is written with great ability and candour, Mr. Monroe flatters himself that Mr. Fox will take the trouble to give it an attentive perusal.

Mr. Monroe has been much gratified by the assurances which Mr. Fox has given him in their several interviews, of his disposition to adjust the differences between their governments, on the most just and liberal principles. He has high confidence in those assurances and in the prospect they afford of an early accomplishment of their object. In consideration, however, of the great length of time which has elapsed since the commencement of the seizures, and that which will be required to conclude the business, he deems it his duty to submit to Mr. Fox, whether it will not be proper that his majesty's government should suspend the seizure and condemnation of American vessels on the principle in question. Mr. Monroe presumes, that such a suspension in any case where one of the parties to an amicable negotiation was suffering very extensive injuries under the operation of a principle which they were desirous to adjust, would be proper. In the present one, however, it seems to him to be made peculiarly so by a late decision of the lords commissioners of appeal, in the case of the *William, Treffrey*, which confirms the

principles of the former decisions, which have been, as Mr. Monroe presumes, so justly complained of by his government. He apprehends that this decision, unless followed by the suspension proposed, will be considered by the United States and his majesty's cruizers, as a sanction by the present government to the policy which has been heretofore pursued. In case his majesty's government thinks proper to adopt the measure which is requested, Mr. Monroe hopes that Mr. Fox will be so good as to give him early notice of it, that he may transmit it to his government without delay.



*Extract of a letter from Mr. Monroe to Mr. Madison,
dated, London, April 18, 1806.*

"I received yesterday a note from Mr. Fox, appointing to-morrow (Saturday 19,) for an interview, with which I shall of course comply. I met him afterwards and had a conversation with him in the queen's drawing room, which being of an interesting nature, I hasten to communicate to you. He took me aside and observed that we must now soon settle our business. I replied that I hoped he was ready to do it. He intimated that he was essentially; that we would begin on Saturday and pursue it without delay till it was concluded. Some remarks of his having led the conversation to the merits of the principle topic, I told him that he must leave us in the enjoyment of the trade in question, and pay us for the property taken. To the first proposition he immediately assented. To the second he said there would be objections. He added that he had taken steps to prohibit the farther condemnation of our ships and cargoes, as I had desired, of which he intended to have informed me by note, but had been prevented by other business; he had no objection, however, still to do it. I cannot be positive whether he said that the pro-

hibition extended also to the seizure of our vessels, though I rather think it did. When I see him to-morrow, I shall easily ascertain this. He observed that we must make some arrangements to accommodate them in return : that the practice of buying or pretending to buy enemies vessels, as was done in the north, ought to be suppressed, and he hoped that I would join him in it. I said that we would do all we could to prevent fraudulent practices ; that such purchases were rarely made by our citizens, as we were rather sellers than purchasers of ships. He considered it in that light, and I found, wished some precedent from us, which might avail him in the north, and make more acceptable at home the accommodation given us in other respects. I left this topic, however, open ; having said nothing to compromit myself on it. As the whole of this conversation though apart, was nevertheless in a public room full of company, it was impossible to make it more precise. I could not, therefore, attempt to ascertain to what extent he was willing to leave the commerce with enemies colonies free. I shall doubtless collect his idea on that point to-morrow, since it seems best to hear his proposition before I say any thing on it, and I shall not fail in any case to attend to your instruction of January 13."

I am, sir, with great respect, &c.

(Signed)

JAMES MONROE.

*Extract of a letter from Mr. Monroe to Mr. Madison,
dated, London, April 20, 1806.*

" I have the pleasure to inform you that I had an interview with Mr. Fox yesterday, in which we conferred on all the interesting topics depending between our governments. The result was as satisfactory, in

respect to his own views, as his more early communications had promised, and gave a prospect more favorable of the disposition of the cabinet generally than I had anticipated. The substance of what passed in our conference of the 17th, was fully confirmed in this, and his sentiments on some points, on which I had not then clearly understood them, were made more explicit. The prohibition mentioned in my letter of the 18th, is to be extended to the seizure as well as the condemnation of our vessels, of which he is to give me official notice in a day or two. On the principle, there seems to be no question between us but in respect to the direct trade between the colony and the parent country. To the justice of our claim of indemnity, he said little, but I see that it is a point which the ministry will find it difficult to concede from a variety of considerations. I am, however, not without the hope that it may be placed on a satisfactory footing. He expressed a desire to take up the subject of commerce generally, more especially in respect to the West Indies, the intercourse between which and the United States he thought it important to both countries to arrange at this time. I shewed a willingness to meet him on the general subject, or any part of it on which we could agree. The sentiments which he expressed on this, and every other subject, to which our conversation extended, were of a very liberal kind, and communicated with frankness and candor. He admitted that it ought not to be expected that the United States would allow their productions and resources, which were necessary to the existence of the West India colonies, to be drawn from them otherwise than on fair principles of reciprocity. It was finally agreed that he should write me a second letter, which would be in reply to those I had written to lord Mulgrave, in which he would explain the views of his government on the subject of them. He promised to write this letter in a week or ten days, if not prevented by unexpected

events. This letter will of course lay the foundation on the part of his government of the negotiation.

I am, sir,

With great respect, &c.

(Signed)

JAMES MONROE.

No. 47.

LONDON, APRIL 28, 1806.

SIR,

Having waited a week after my interview with Mr. Fox on the 19th, without receiving either of the communications which he then promised me, I called on him on the 25th to know the cause, and to confer freely again on our affairs, if he should be so disposed. As he anticipated the object of the visit, we soon entered on it. After some introductory remarks on other topics he began by asking what was the minimum of our demands respecting the seizures? Could we not agree in some modification of our respective pretensions, some compromise? For example, to adopt some plan which might answer our object without compromising his government. As I perceived that he alluded principally to our claim to an indemnity, I observed, that if the principle was admitted to be with us, the indemnity followed of course. But, says he, cannot we agree to suspend our rights, and leave you in a satisfactory mode, the enjoyment of the trade? In that case nothing would be said about the principle, and there would be no claim to an indemnity. I told him that I could not agree to such an adjustment; that the right was unquestionably with us; the injury had been severe and unprovoked, and that we could not abandon our claim in either case. He entered into such a view of the subject as shewed a disposition to yield what accommodation he could, in a manner the least objectionable on his part. He did not seem desirous of discussing

the question of right, nor did he deny that an indemnity was fairly incident to it. He then asked how the fact stood relative to the continuity of the voyage? On what ground did the charges rest of the congress having made regulations to evade the principle insisted on by the court of admiralty? I replied on none whatever; that the question of continuity had never occurred between our governments; that it was a creature of the court of admiralty, who had set it up as a doctrine, and supported it by such charges to justify the condemnation; that my government had never admitted the right in his to impose any restraint on the trade of neutrals, with enemies colonies, other than with the parent country; that his government had repeatedly admitted and established that claim by the most solemn acts, as had been proved by the documents in his possession: that he must be sensible if my government was capable in any case of passing acts to evade a principle, it would not do it in the present one, where it could only serve to create doubts to the prejudice of the United States, and by giving a new sanction to the former pretensions of his government, revive a controversy which had been already amicably settled in their favor. I added that I possessed an official document, which fully proved what I had advanced respecting our regulations which, with his permission, I would send him. He expressed a desire to receive it. Well, says he, I perceive that your minimum and maximum are the same. I replied that I did not see how it could be otherwise; that we only sought what was strictly just, and ought not to be desired to relinquish any portion of that. He then proceeded to insist that our vessels which should be engaged in that commerce, must enter our ports, their cargoes be landed and the duties be paid on them. I said that such restraints were incompatible with our just rights. He urged also that we must unite in a plan to prevent the fraudulent sale and use of enemies vessels. I was apprehensive that any sti-

pulation on that head might lay the foundation of new disputes. He thought that we were interested as ship-builders in suppressing all such frauds: besides, says he, you must yield something to justify the concessions that are expected from us. I told him that I should be glad to see his project, or that he would answer my letters in such a manner as to lay the foundation of a treaty. He assured me that he would do so as soon as he could; but as he had failed to comply with his former promise, he was afraid to make another as to time; but gave me reason to expect one in a week or ten days. As I had cause to suspect from his remarks on the whole subject, that an order to prohibit the seizure and condemnation of our vessels had not been issued, I asked him explicitly the question. He said that none had been issued; that in truth such a step would be to give up the point in negotiation. I inferred, however, that the measures which he informed me on the 17th and 19th he had taken for that purpose, were of a nature to produce the desired effect. These are, I suppose, confidential in the cabinet with the court of admiralty, &c. The order itself has most probably been withheld for the present, that it might be connected with the general subject, on the principle above adverted to by Mr. Fox. I could not, however, push the inquiry on that point further at the time, from motives of delicacy to him, nor did there appear to be any strong reason for it. I cannot suppose that nothing is done in that respect, and am persuaded that the business is so far advanced, that if intended, as I presume, the order must soon be issued.

On the day after the interview abovementioned, I sent Mr. Fox a copy of Mr. Gallatin's letter to you explaining the mode of entering goods, and paying the duties on them in the United States, as I had promised. I had not done this to lord Mulgrave, because the state of the business with him would have given it the air of a concession on my part. I availed my-

self of the opportunity to state explicitly that I could not enter into any adjustment which did not provide a reasonable indemnity for injuries. It seemed to me obvious that that claim formed a principal difficulty in the cabinet, and I was persuaded that it might have a good effect to give him what would be considered the ultimatum on it. I have not heard from Mr. Fox since, though it is presumable that I soon shall, for I do not suspect him of the want of good faith in his communications with me. It is proper, however, to add, that independent of the real importance of the subject, and the responsibility incident to any concessions which may be made in our favor by the present ministry, of the pretensions of the former, circumstances which are likely to inspire caution and create delay in the cabinet, the additional one of his being a member of the house of commons, for the management of the prosecution of lord Melville, cannot fail to increase it. I shall nevertheless do every thing in my power, consistent with propriety, to bring the business to as early a conclusion as possible, and to comprise in the adjustment, in the manner enjoined by my instructions, the important questions respecting our seamen and boundaries.

You will observe that Mr. Fox insisted in the late interview on restricting the trade with enemies colonies in a greater degree than he had done in the preceding one. I am convinced that this was produced by the cabinet deliberations on the subject, for I am strong in the opinion, that if left to himself, he would meet in arrangements which would place the whole business, and indeed all our relations, on the most broad and liberal basis, in a firm belief that by so doing, he would advance the best interests of his country. But he has to consult and accommodate with others, some of whom may perhaps not entertain in all respects the same sentiments, or be equally prepared to encounter, in a new scheme of policy, ancient and deep-rooted prejudices. When I get his answer

I may remind him of his former concession in this respect, if it should appear that any advantage was likely to result from it. I shall not fail, however, to pay great attention to this particular object, and will certainly not agree to any restraint on the trade which can be avoided, or is likely to be disapproved by the president.

I am, sir, with great respect,

Your very obedient servant,

JAMES MONROE.

PRINCE'S STREET, *April 26, 1806.*

Mr. Monroe presents his compliments to Mr. Fox, and has the honor to inclose him a copy of the official document mentioned in their interview of yesterday, being a letter from the secretary of the treasury to the secretary of state, explaining the manner in which duties are paid on goods imported into, and exported from the United States. Mr. Fox will find by this document, that the regulations respecting that subject are uniform and applicable to all articles exported, and that they were not adopted to favor any particular commerce as has been erroneously supposed. Mr. Fox will be the more sensible of this fact, when he recollects that the government of the United States never admitted the right in Great Britain to inhibit the commerce in question ; that on the contrary it had concluded on the highest possible evidence, as is proved by the papers in Mr. Fox's possession, that Great Britain had relinquished the pretension.

Mr. Monroe considers it his duty to observe to Mr. Fox, that as his government thinks itself entitled to the commerce referred to, and that the citizens of the United States have been injured by the attack which has been made on it, by his majesty's cruizers and privateers, under circumstances too, that were peculiarly calculated to inspire a confidence in their

security, his instructions forbid his entering into any adjustment which does not look to the object of a reasonable compensation. He makes this communication with candour, in the hope, that Mr. Fox will take it into consideration, in the answer which he has been so good as to promise him, at an early day.

Mr. Monroe flatters himself that his majesty's government will be animated by a sincere desire to meet the government of the United States, in such an arrangement as will establish the relations of the two countries on a ground of permanent friendship, and that it will be of opinion, independent of the satisfaction to be derived from rendering justice to a friendly power which it has injured without provocation, that the recompense due to the sufferers is but a trifling consideration, when compared with so great a national object. Mr. Monroe hopes that Mr. Fox will see the propriety of placing this business in his answer on such ground as may promise a satisfactory adjustment of it, and for the reasons stated in his note of the 31st ult. that his majesty's government will not hesitate, in the present stage, to prohibit the further seizure and condemnation of American vessels, on the principle in question.

No. 48. (COPY.)

LONDON, MAY 17, 1806.

SIR,

After my interview with Mr. Fox, on the 25th ult. I waited a fortnight without hearing from him. This new instance of delay surprised me, because he had shewn a sensibility to the former one, and did not seem aware of the necessity of adding to it. Independent of the general object, the war with Prussia, and the blockades incident to it, the doctrine and practice respecting which it was necessary to arrange, furnished a new motive for a communication with

him. On mature reflection, I thought it best to call informally, which I did on the 11th, with a view to enter on these topics in the familiar manner I had heretofore done. Mr. Fox was at the office, but did not receive me. He sent the expression of his regret at not being able to do it, being as he said just going to attend the cabinet, who were waiting for him. I called again on the 13th, and experienced the same result, though I had left word that I should then be there. I was informed by his desire, that a summons from the king, to attend him at the palace, prevented his receiving me on that day. I met him on the 15th at the drawing room, but had no opportunity of speaking to him. Sir Francis Vincent, the first under secretary of state, being acquainted with my desire, promised to arrange with him an interview, and to inform me of it. These are the only circumstances worthy notice that have occurred here since my last, till to-day. I mention them that you may be better enabled to judge correctly, in all respects, of the light in which the incident of this day ought to be viewed. Early this morning I received from Mr. Fox a note, a copy of which is enclosed, which you will perceive embraces explicitly a principal subject depending between our governments, though in rather a singular mode. A similar communication is, I presume, made to the other ministers, though of that I have no information. The note is couched in terms of restraint, and professes to extend the blockade further than was heretofore done; nevertheless it takes it from many ports already blockaded, indeed from all east of Ostend and west of the Seine, except in articles contraband of war and enemies property, which are seizable without a blockade. And in like form of exception, considering every enemy as one power, it admits the trade of neutrals, within the same limit, to be free, in the productions of enemies colonies, in every but the direct route between the colony and the parent country. I have, however, been too short

a time in the possession of this paper to trace it in all its consequences in regard to this question. It cannot be doubted, that the note was drawn by the government in reference to the question, and if intended by the cabinet as a foundation on which Mr. Fox is authorized to form a treaty, and obtained by him for the purpose, it must be viewed in a very favorable light. It seems clearly to put an end to further seizures, on the principle which has been heretofore in contestation. I am engaged, by invitation, with Mr. Fox, on the 19th, when it is probable I may have an opportunity of conversing with him, and thereby enabled to form a satisfactory opinion on the subject. I hasten however to forward you the enclosed, with the above details, as it is important for you to have them. It is worthy of attention that at the drawing room, on the 15th, it was whispered about, that the bill for prohibiting the importation of British goods, &c. had passed the senate, of which it was said that intelligence had that morning been received. It evidently produced some sensation, which was doubtless the stronger from the idea then entertained, that the bill was to commence its operation at an early day. I observe, however, with pleasure, that on the whole the measure is considered by the government papers, on account of the distant period at which it does commence, rather as a pacific than as a hostile one. I persuade myself that the present ministry will see in the circumstance of delay, a strong proof of the disposition of the United States, not only to preserve the relations of peace with Great Britain, but of their confidence, that the ministry is animated with the same desire. I cannot help remarking likewise the fact, that this paper was sent me immediately after the passage of the bill was known. It furnishes a strong presumption, that the government papers judge correctly of the sentiments of the government on that point. It may be inferred, that a knowledge of the passage of the bill hastened the communication to me.

But my own opinion is, that the business, having had its regular course, was advanced to such a stage that it would have been made had the intelligence not been received. This opinion, however, is formed on circumstances only, and may be erroneous. I hope soon to be able to give you more certain and satisfactory information respecting it.

I am, sir, with great respect and esteem,

Your very obedient servant,

(Signed)

JAMES MONROE.

P. S. I enclose to you a note from M. Lorentz, the minister resident of Hesse-Cassel, requesting certain information, which if in your power to obtain, I beg you will be so good as to transmit to me.

DOWNING STREET, MAY 16, 1805.

The undersigned, his majesty's principal secretary of state for foreign affairs, has received his majesty's commands to acquaint Mr. Monroe, that the king, taking into consideration the new and extraordinary means resorted to by the enemy for the purpose of distressing the commerce of his subjects, has thought fit to direct that the necessary measures should be taken for the blockade of the coast, rivers and ports, from the river Elbe, to the port of Brest, both inclusive; and the said coast, rivers and ports are and must be considered as blockaded; but that his majesty is pleased to declare that such blockade shall not extend to prevent neutral ships and vessels, laden with goods not being the property of his majesty's enemies, and not being contraband of war, from approaching the said coasts, and entering into and sailing from the said rivers and ports, (save and except the coast, rivers and ports from Ostend to the river Seine, already in a state of strict and rigorous blockade and

which are to be considered as so continued) provided the said ships and vessels so approaching and entering (except as aforesaid) shall not have been laden at any port belonging to or in the possession of any of his majesty's enemies, and that the said ships and vessels so sailing from the said rivers and ports (except as aforesaid) shall not be destined to any port belonging to or in the possession of any of his majesty's enemies, nor have previously broken the blockade.

Mr. Monroe is therefore requested to apprise the American consuls and merchants residing in England, that the coast, rivers and ports abovementioned, must be considered as being in a state of blockade, and that from this time all the measures authorized by the law of nations, and the respective treaties between his majesty and the different neutral powers, will be adopted and executed with respect to vessels attempting to violate the said blockade after this notice.

The undersigned requests Mr. Monroe to accept the assurances of his high consideration.

(Signed)

C. J. FOX.

*Extract of a letter from Mr. Monroe to Mr. Madison,
dated, London, May 20, 1806.*

“ From what I could collect, I have been strengthened in the opinion which I communicated to you in my last, that Mr. Fox's note of the 16th, was drawn with a view to a principal question with the United States, I mean that of the trade with enemies colonies. It embraces, it is true, other objects, particularly the commerce with Prussia, and the north generally, whose ports it opens to neutral powers, under whose flag British manufactures will find a market there. In this particular, especially, the measure promises to be highly satisfactory to the commercial interest, and it may have been the primary

object of the government. You will observe that I have not considered the note as a reply to mine, or as being any way connected with them. It was not communicated to me as such, and it was evidently improper for me to consider it in that light. In directing the publication of it, I have expressed no sentiment on the contents, but left them to the criticism of the public.

With respect to the delay to which I am exposed, it is utterly out of my power to explain to you the cause. I have no reason to change the opinion, which I have heretofore expressed of Mr. Fox's disposition on the subject, though I have had no late communication with him. His present reserve is unfavourable, but it may be otherwise accounted for, and on principles which are quite natural and therefore presumable. He may have experienced more difficulties in the cabinet than he had expected. Many of the members may be indisposed to an arrangement on such terms as can be accepted, and most of them willing to postpone any decision, until the result of the proceedings in congress is known. Under these circumstances he may find it most eligible to avoid any further communication with me for the present.

It becomes, therefore, very difficult, if not altogether improper, for me to press the business at this time. It seems to be my duty to postpone such pressure to the same epoch, that is, till the final proceedings of congress are known. I shall doubtless receive with them the instructions of the president on the whole subject, which I beg to assure you, I shall use my utmost exertions to carry into effect."

I am, sir,

With great respect, &c.

(Signed)

JAMES MONROE.

*Extract of a letter from Mr. Monroe to Mr. Madison,
dated, London, June 9, 1806.*

On the 31st ultimo accounts were received here from the United States that the president and senate had adopted the measure of a special mission to this country, in which Mr. Pinkney and myself were associated. These accounts, which appeared to be well founded at first, have been confirmed since by letters to individuals, so that the fact seems to be unquestionable. I have not received official information of it but expect it from you daily.

A suspension of further proceeding in the business in which I have been engaged, seemed to be the natural consequence of this measure as soon as it was known. It has accordingly, already produced that effect, and will probably preserve it in the same state till Mr. Pinkney arrives. I hope, therefore, that I shall soon have the pleasure of seeing him.

My former letters, the last of which was of May 20, shewed how this business stood at that time. I have since seen Mr. Fox twice, on the 4th and again on the 7th instant. The first interview was at his own house, on the anniversary of the king's birth, in a general rendezvous of the diplomatic corps. In that I touched on some interesting subjects, particularly the outrages lately committed at New York by the British cruizers, our non-importation act, and the affair of general Miranda. But as we could not treat those subjects with advantage in a croud, it was agreed to postpone the consideration of them to the 6th, when I promised to attend him at his office for the purpose of entering more fully into it. The interview was afterwards deferred by him to the 7th, when it took place.

Although the object of this latter meeting was special, yet it naturally brought into view the other topics in which we had been engaged, and with them that of the appointment abovementioned. Mr. Fox asked me, soon after we met, whether such an appointment

was made? I told him that I had no official information of it, but I believe that it was. He said that Mr. Merry had informed him in his last letter that the measure was decided on, but had not been communicated to the senate. What effect, added he, will it produce on our business? It was evident that he thought it ought to suspend it. It was of course useless for me, had it even been proper, and I of a different opinion, to express it. My answer, therefore, corresponded with his expectation. I availed myself of the opportunity to assure Mr. Fox, that Mr. Pinkney was every way well qualified for the trust, and that I was persuaded that he would be well satisfied with the appointment.

The general subject being thus disposed, we proceeded to those which had been touched in our communication of the 4th. I told Mr. Fox that the outrage in the case of the unfortunate victim, John Pierce, had been committed, as appeared by the affidavits published, within the jurisdiction of the United States. I stated that the harbor of New York had been blocked up by those frigates, as if it were an enemy's port; that they did not appear to have taken their station there for hospitality or shelter, but for invasion. I told him of the outrages which had been committed at the same port in the autumn of 1804, by the same frigates, as of the conduct of his government in that respect, recalling in the first instance the officer who had given most offence, but finally promoting him to the command of a ship of the line. Mr. Fox said that he wanted information respecting the late unfortunate event: should it appear that the officers had acted improperly, due attention should be paid to the subject. He added that he had already written to Mr. Merry in that sentiment, and would also express it in a letter to me. In speaking of the non-importation act, he expressed his regret that it had passed. He said that it had the air of a menace, and that it was not agreeable to do things by compulsion. I reminded him how long we had

complained of injuries which his government had not attempted to justify: injuries which were not imaginary or perspective, but real and severe, which affected equally the honor and the interest of the United States. I added that under such circumstances his government had no right to complain of the act referred to. I assured him, however, that I was of opinion, if the ministry had not changed, that a bill of a very different import would have been adopted; that I had reason to believe that the tone of our government, and of the congress, had been essentially moderated by the information which I had given of his assurances that our differences should be settled amicably, and on just principles; that the act which had passed in consequence of that information was little more than a declaration to the citizens of the United States that the object would be duly attended to. I observed that he must be sensible, after the subject had been taken up by congress, as it was before the change of the ministry was known, that it was impossible for that body to dismiss it without some expression of the rights of the United States in the question in dispute, without exposing itself to the charge of having abandoned them. He seemed finally to admit that the congress could not well have avoided doing something in the business and that the measure which had been adopted ought to be considered as a moderate one. I was glad to hear this sentiment from Mr. Fox, because I had feared that he would urge the passage of the act, as a discharge from the obligation, which his communications with me had in a certain degree imposed on him, in respect to the conditions on which he was disposed to make the settlement, and in which, in some particular and interesting points, he was precise and explicit.

I then observed to Mr. Fox, that I should be glad he would state in the letter which he had promised, his willingness to resume the business when Mr. Pinkney should arrive, and with a view to conciliation and dispatch, objects which merited attention at

the present time, that he would also advert in it, to the several subjects which we had had under consideration, in the sentiments which he had expressed in our conferences. He seemed to be aware that the proposition was a reasonable one, and promised, without hesitation, to comply with it; but, says he, I am afraid that I cannot be very distinct in it. I replied that I should leave that to himself, but that I presumed he could easily recollect what had passed between us on each point; that in respect to the trade with enemies colonies especially, I did suppose that it had been intended by the late order to place it on the ground of the Russian treaty, and that he might go with safety in his letter, as far as the order went. He neither admitted or denied the fact explicitly, though he did not seem willing to give his sanction to the inference I had drawn. I criticised the order as well as I could from memory, to shew why I had made the inference, without, however, expressing any approbation of the order. He said it was true that the produce of enemies colonies might, under the exceptions stated in the order, find admission in neutral vessels into the enemies ports, but yet he did not seem willing to admit that that was the particular object of the order. I did not press this point further, because I saw no motive for it. I concluded, however, from this conversation, as I had done from what had occurred before, that this measure had been taken to prevent the further seizure and condemnation of our vessels on the principle in discussion between our governments, and that the acknowledgment of it had been withheld from a consideration mentioned by Mr. Fox in one of our conferences, that such acknowledgment would be to give up the point in negotiation. Several circumstances, independent of those alluded to, support this idea. It is not necessary to state them, because I trust that the business will ere long be placed on a much more solid footing.

I am, with great respect, &c.

(Signed)

JAMES MONROE.

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